

WORK SESSION: A work session will be held at 6:00 p.m. in Conference Room #3, Second Floor, of the Farmington City Hall, 160 South Main Street. The work session will be to discuss the replacement of street lights and to answer any questions the City Council may have on agenda items. The public is welcome to attend.

FARMINGTON CITY COUNCIL MEETING NOTICE AND AGENDA

Notice is hereby given that the City Council of **Farmington City** will hold a regular City Council meeting on **Tuesday, September 3, 2013, at 7:00 p.m.** The meeting will be held at the Farmington City Hall, 160 South Main Street, Farmington, Utah.

Meetings of the City Council of Farmington City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

The agenda for the meeting shall be as follows:

CALL TO ORDER:

7:00 Roll Call (Opening Comments/Invocation) Pledge of Allegiance

PUBLIC HEARINGS:

7:05 Local Consent for Citadel Broadcasting Corp. Event Permit "Temporary Beer"

PRESENTATION OF PETITIONS AND REQUESTS:

7:10 Waiver Request for Water Meter Fees

7:15 Schematic Plan for Kestrel Bay Estates PUD Subdivision

SUMMARY ACTION:

7:30 Minute Motion Approving Summary Action List

1. Approval of Minutes from August 20, 2013
2. Amended Employment Agreement for City Manager
3. Final Plat for Miller Meadows Phase 5
4. Final Plat for Oakwood Estates Phase 6
5. Street Lighting Replacement Contract with Seimens

GOVERNING BODY REPORTS:

7:35 City Manager Report

1. Letter to Davis County Public Works – Kirk Schmaltz

2. City Council Follow-up List

7:40 Mayor Harbertson & City Council Reports

ADJOURN

CLOSED SESSION

Minute motion adjourning to closed session for property acquisition.

DATED this 29th day of August, 2013.

FARMINGTON CITY CORPORATION

By: Holly Gadd
Holly Gadd, City Recorder

***PLEASE NOTE:** Times listed for each agenda item are estimates only and should not be construed to be binding on the City Council.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting, should notify Holly Gadd, City Recorder, 451-2383 x 205, at least 24 hours prior to the meeting.

CITY COUNCIL AGENDA

For Council Meeting:
March 19, 2013

S U B J E C T: Roll Call (Opening Comments/Invocation) Pledge of Allegiance

It is requested that City Manager Dave Millheim give the invocation/opening comments to the meeting and it is requested that Council Member Cory Ritz lead the audience in the Pledge of Allegiance.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.

CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

PUBLIC HEARING: Local Consent for Citadel Broadcasting Corp. Event Permit
"Temporary Beer"

ACTION TO BE CONSIDERED:

1. Hold the public hearing.
2. Approve the Local Consent forms for the State of Utah Event Permit
"Temporary Beer" for Citadel Broadcasting Corp.

GENERAL INFORMATION:

See enclosed staff report prepared by Ken Klinker.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
RICK DUTSON
CORY R. RITZ
JIM TALBOT
SID YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Ken Klinker, Planning Department

Date: August 16, 2013

SUBJECT: **Local Consent For Citadel Broadcasting Corp. Event Permit
"Temporary Beer"**

RECOMMENDATION


1. Hold a Public Hearing as Required by City Code.
2. Approve the Local Consent forms for the State of Utah Event Permit "Temporary Beer" for Citadel Broadcasting Corp.

BACKGROUND

Citadel Broadcasting Corp. is applying to the State of Utah for an Event Permit "Temporary Beer" liquor license to allow them to sell beer at the Davis County Fairgrounds during a "Man Camp" event they will hold there on November 22-23, 2013. In order to receive this license, they are required to get "Local Consent" from the local community. They have submitted the form for local consent which will be attached to their application to the state if approved by the Council.

Farmington City Ordinance Section 6-5-160 Processing of Application; Local Consent, requires a request in writing, a copy of their Farmington Business License, evidence of proximity to any school, church, public library, playground or park, and a floor plan showing where they will keep, store and sell liquor. The required information has been provided.

Respectfully submitted,


Ken Klinker
Planning Department

Review and Concur


Dave Millheim
City Manager

EVENT PERMIT
"TEMPORARY BEER"
Local Consent

PURPOSE: Local business licensing authority provides written consent to the Alcoholic Beverage Control Commission to issue an event permit to an organization for the purposes of storage, sale, offer for sale, furnish, or allow the consumption of an alcoholic product on the event premises

AUTHORITY: Utah Code 32B-9-201

Farmington City, ☒ City ☐ Town ☐ County
Local business license authority

hereby grants its consent to the issuance of a single event permit license to:

Applicant Entity/Organization: Citadel Broadcasting Corp a wholly owned subsidiary of Cumis media, Inc

Event location address: 151 S 1100 W Farmington UT 84025
street city state zip

On the 22nd & 23rd day(s) of November, 2013
dates month year

during the hours of 11/22/13 4PM-10PM, 11/23/13 10A-10P, pursuant to the provision of Utah Code 32B-9.
defined hours from to

[Signature]

Authorized Signature

LUTISHA MERRILL
VP OF SALES

Name/Title

8.13.13

Date

___ New
___ Renewal

FARMINGTON CITY
160 S. Main, P.O. Box 160
Farmington, UT 84025
801-451-2383



SINGLE EVENT BEER PERMIT APPLICATION

(Please print)

Name of Business: Citadel Broadcasting Corporation, a wholly owned subsidiary of Cumulus Media, Inc

Business Address (Location & Mailing): 434 Bearcat Drive, SLc, Ut

1. Have you ever been denied a license to sell or otherwise dispense beer by any federal, state, county, city or other local government entity? If yes, please provide all pertinent information relating thereto.

No

2. If the applicant is a partnership, list the names and addresses of all partners. If the applicant is a corporation, list the names and addresses of all officers and directors.

Name

Address

Cumulus Media, Inc a C-Corp

Lewis W. Dickey, Jr. - Chairman, President & CEO

Jonathan G. Pinch - Executive VP & Co-CEO

John W. Dickey - Executive VP & Co-C.O.O.

Joseph P. Hannan - Senior VP, Treasurer & CFO

Richard Denning - Senior VP, Secretary & General Council

3. Please include the following with your application:

- (a) A site plan of the location of the single event, including clear depiction of the consumption areas and areas where the applicant proposes to keep, store, and sell beer
- (b) Evidence of proximity to any school, church, public library, playground, or park
- (c) A statement of the purpose of the association, corporation, church, or political organization or its local lodge, chapter, or other local unit

- (d) A signed consent form stating that authorized representatives of the City, including any City law enforcement agency, will have unrestricted right to enter the premises during the event.
- (e) Proper verification evidencing that the person signing the application is authorized to act on behalf of the association, corporation, church, or political organization conducting the single event — *Business Card Attached*
- (f) **\$300.00 License Fee**

The undersigned hereby certifies that the above information is true and correct and that the undersigned has full authority to represent the owner(s) of the business in making this application. The undersigned further certifies and states under oath that the applicant has read, understands, and has complied with all requirements applicable to the applicant under the Utah Liquor Control Act and the requirements of Title 6 of the Farmington City Ordinances.

Tommy Rodger Business Manager

Signature

Please contact Farmington City Hall if you would like a copy of the Business Regulations.

FOR OFFICE USE ONLY.

Date Received _____ Receipt #: _____ License #: _____ Account #: _____

Approved By _____ Date _____

Fire Inspection Required _____ Yes _____ No _____

August 7, 2013

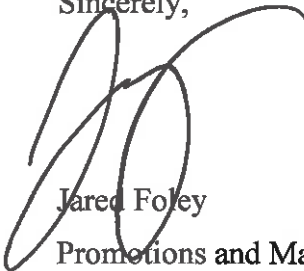
Farmington City
160 S Main Street PO Box 160
Farmington, UT 84025

To Whom It May Concern:

Cumulus Media will be hosting a vendor event called "Man Camp" on November 22nd and 23rd, 2013 at the Legacy Events Center.

This letter confirms that all authorized representatives of the City of Farmington, including Law Enforcement have unrestricted access and rights to enter the premises during our event.

Sincerely,



Jared Foley
Promotions and Marketing Manager – Cumulus Media

FARMINGTON CITY
160 S. Main, P.O. Box 160, Farmington, UT 84025 801-451-2383
TEMPORARY BUSINESS LICENSE APPLICATION

BUSINESS NAME: Citadel Broadcasting Corporation, a wholly owned
(Please print) Subsidiary of Cumulus Media, Inc

Address: 434 Bearcat Drive, SLC, Ut 84115

Telephone: 801-485-6700

NATURE OF BUSINESS: Radio Broadcasting - putting on an
Event "Man Camp" - Vendor Show

DATES FOR LICENSE From 11/22/13 To 11/23/13

OWNER'S NAME: Cumulus Media, Inc C-Corp
(If corporation, list principal officers on separate sheet.)

Address: 434 Bearcat Drive, SLC, Ut 84115

Manager's Name: Lutisha Merrill Telephone: 801-464-8562

PERSON to contact after hours (other than Manager) in case of fire or police emergency.

Name: Jared Foley Telephone: ~~801~~ 603-393-3678

LICENSE FEE: \$50.00

Those businesses requiring a fire inspection will be invoiced \$20.00 per hour for such service at the time the inspection occurs.

The undersigned hereby certifies that the above information is true and correct and has full authority to represent to owner(s) of the business making this application.

Signed: Tammy Rodgers, Business Mng. Date: 7/26/13
Tammy Rodgers
(Please Print Name)

FOR OFFICE USE ONLY:

Date Received _____ Receipt # _____ License # _____ Code _____

Approved By _____ Date _____

Fire Inspection Required: _____ Yes _____ No _____

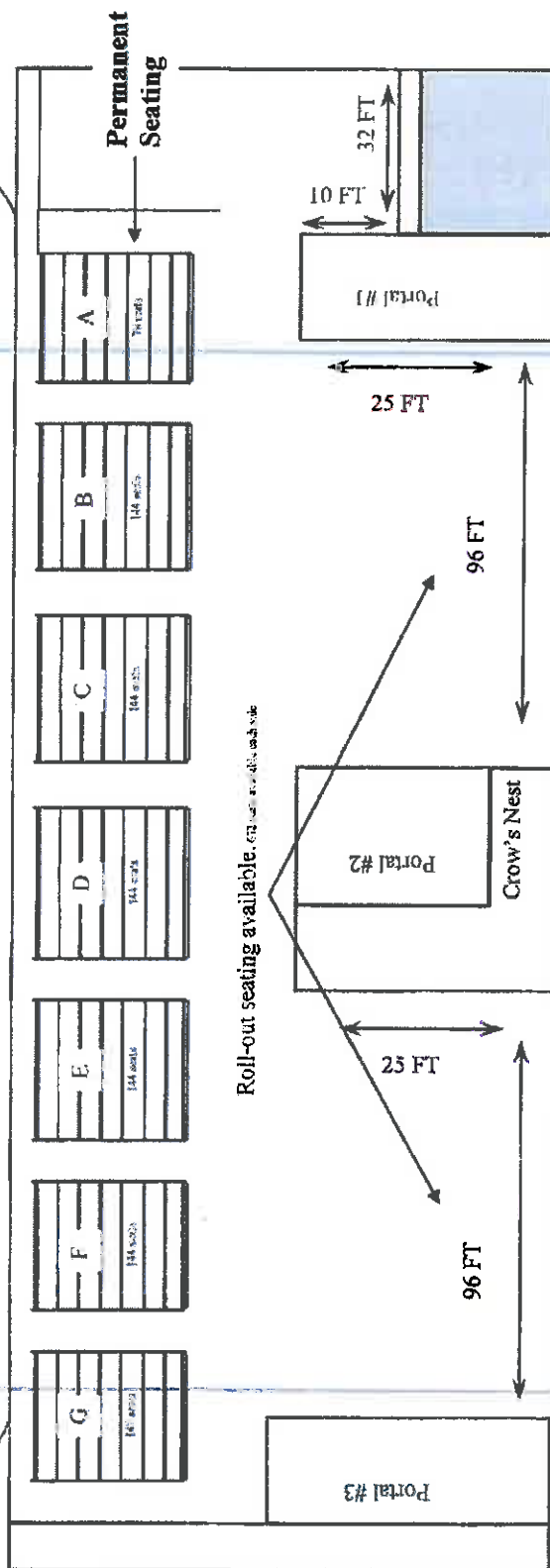
11 2 4 7



BRG CONF

Arena

4 2 2 4
2 5 2
3 1 1
1 1 1



5-6 power outlets located on each stairway wall.

Exhibit Building #2

Approx. 10,000 sqft.

NORTH E

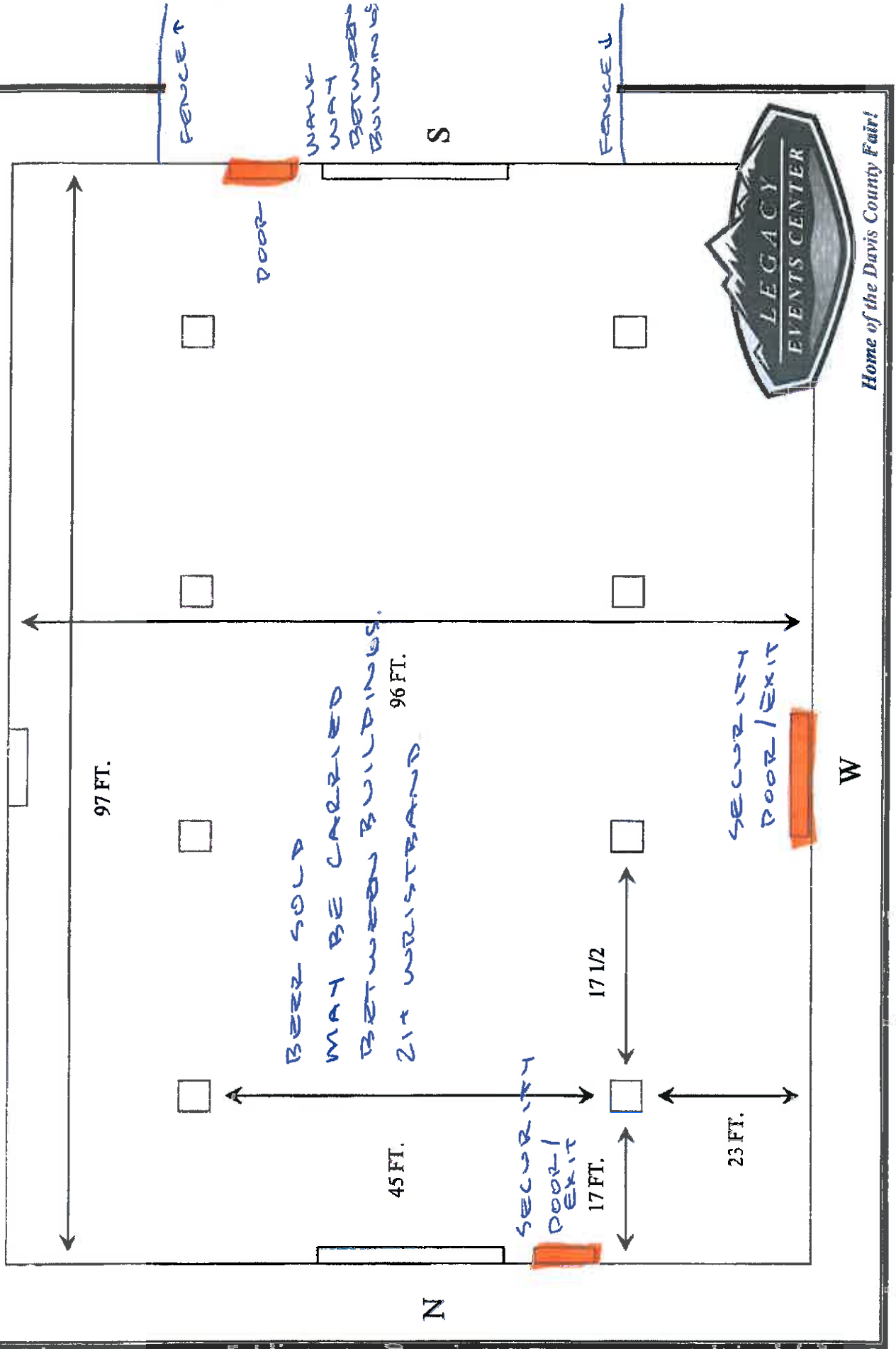
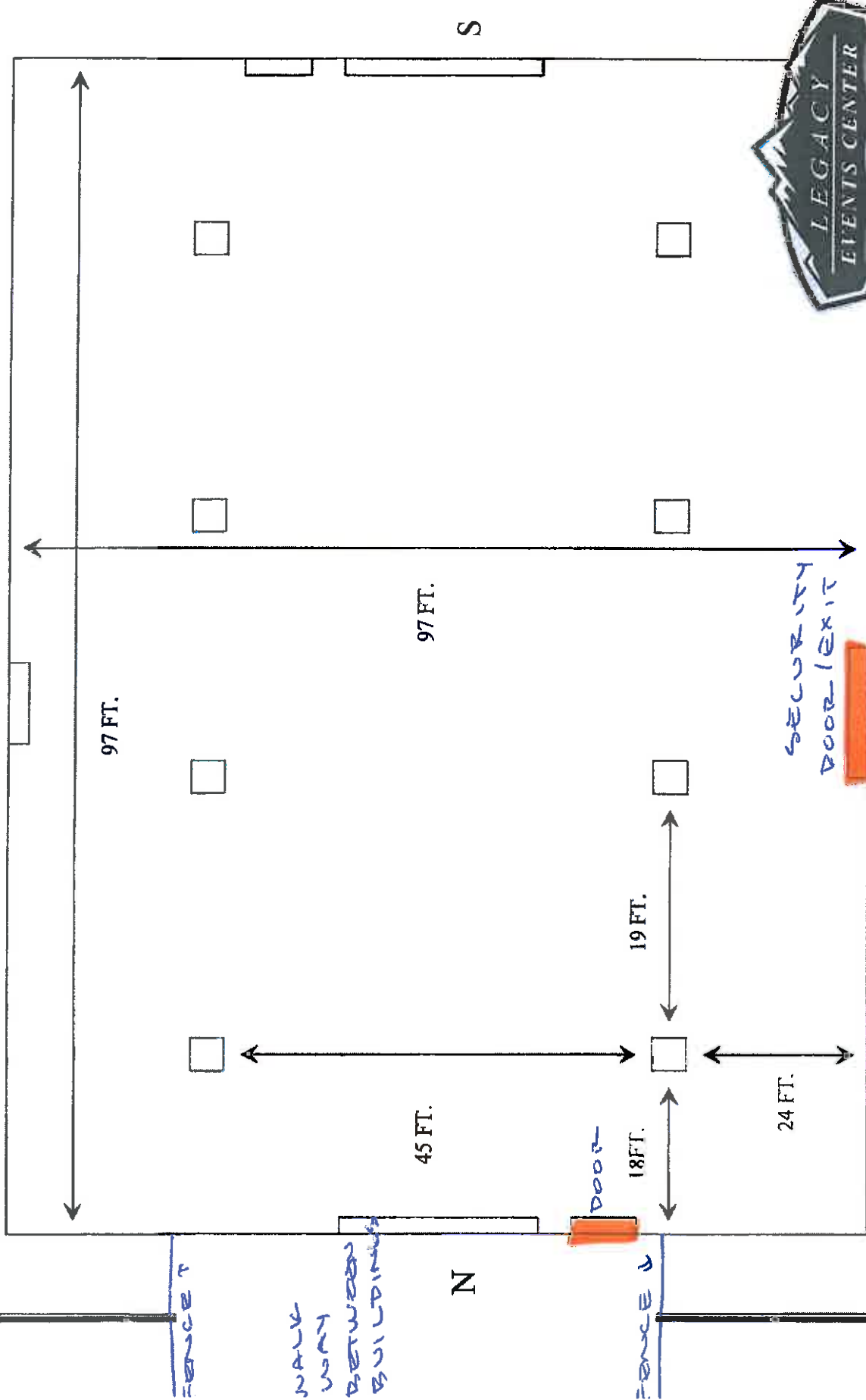


Exhibit Building #3 SOUTH E



Home of the Davis County Fair!

FIAMM CAMP

At Legacy Events Center in Farmington
Friday, November 22nd & Saturday, November 23rd



Friday, November 22nd from 4p-10p & Saturday, November 23rd from 10a-10p

Not this time ... MEN, it's time to get hands on with the things you actually care about.

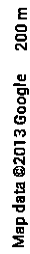
Admission is only \$5.

MAN CAMP wouldn't be complete without FOOD, BEER and Music. We have The Utah Barbeque Federation grill it up with a qualifying event for the National Jack Daniels Competition.

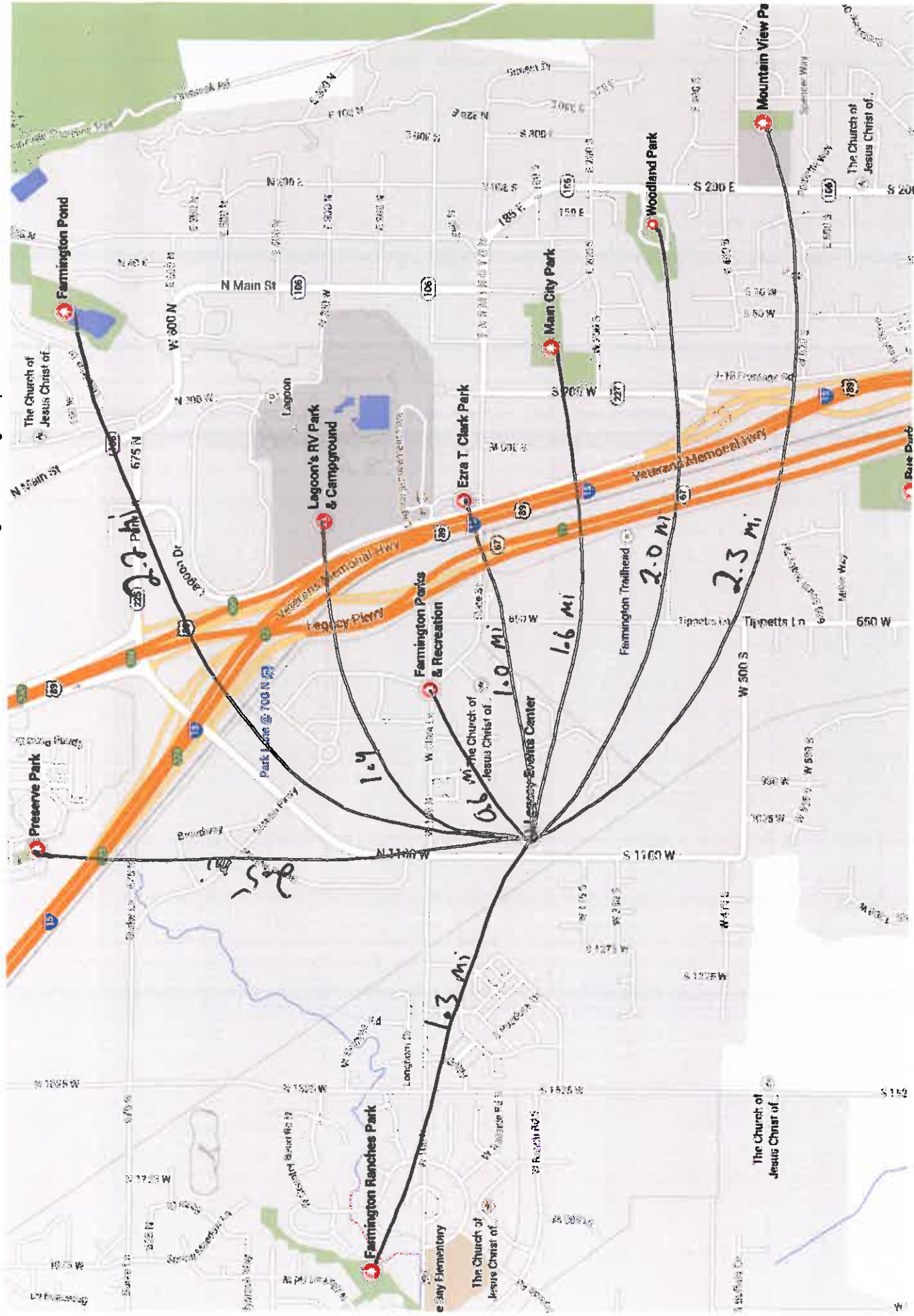














Centrus is the largest independent company in the U.S.

Cumulus Radio strives to create the next generation radio broadcasting enterprise. By leveraging great people and technological excellence, we provide high quality local programming choices for our listeners; targeted audiences with disposable income for our advertisers; and rewarding career environments for our employees.

Michael S. Shuman

Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ E-mail: _____ Website: _____ Fax: _____ Other: _____ Signature: _____ Date: _____	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ E-mail: _____ Website: _____ Fax: _____ Other: _____ Signature: _____ Date: _____	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ E-mail: _____ Website: _____ Fax: _____ Other: _____ Signature: _____ Date: _____
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CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

S U B J E C T: Waiver Request for Water Meter Fees

ACTION TO BE CONSIDERED:

Deny the request to waive the water meter fee for relocating the meter from inside the house to the curb.

GENERAL INFORMATION:

See enclosed staff report prepared by Larry Famuliner.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

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CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Mayor and City Council

From: Larry Famuliner, Water superintendent

Date: August 23, 2013

Subject: **WAIVER REQUEST FOR WATER METER.**

RECOMMENDATIONS

Deny the request to waive the water meter fee for relocating the meter from inside the house to the curb.

BACKGROUND

The City Council this past spring approved this fee structure for change outs and the City has followed it since then and has not allowed for any waivers. The City has required that residents that want to move the meter out of their homes to the curb need to pay \$300.00 for such work to be done. The \$300.00 is to cover mainly for the parts to do the change out. The City has a couple of thousand of these meters located in homes and if someone wants to make the change, then they ought to pay for the change and not have it be paid for by all the other residents. The City is not wanting to change out all of these meter locations, as it would be very time consuming and expensive to do.

The City also can add the \$300.00 to their water bill to be paid over a year time period.

Respectfully Submitted,

Larry Famuliner
Water Superintendent

Review and Concur,

Keith Johnson,
Assistant City Manager

From: "Hadyn Call" <HCALL@dsdmail.net>
To: hgadd@farmington.utah.gov
Sent: Wednesday, August 14, 2013 1:45:35 PM
Subject: Water meter fee waiver - Sept. 3 City Council Meeting

Dear Holly,

I am writing you in regards to our discussion today (Wednesday, August 14, 2013) at the Farmington City Hall building about waiving the water meter fee.

My name is Hadyn B. Call. I am 32 years old and recently purchased, with my wife, the home at 138 E. 500 S. in Farmington. We are so happy to be a part of this wonderful community and look forward to finishing out our days in this city. According to Kathy from the Public Works Department, we were judged the 14th best town to live in in the nation!!!

Inside of our home is the city water meter. It is bulky, awkward, and in an inconvenient location in the house. I fear that one day the meter could leak and cause damage to our home. Many cities are moving to a system where the meters are outside of the residence, and I feel this would be best for us as well. Farmington City currently charges a \$300 parts and installation fee that, as a humble educator in this very district (I teach history, art, and Spanish at Millcreek Junior High School), would like to see waived. Beyond the \$300 fee, I will also have to pay a plumber to remove the old meter and fix the main water line afterwards. This in and of itself will be costly. Having the meter outside of my home will not only benefit me, but the city as well. They will no longer need to access the inside of my home or worry about any leaking that may occur.

So Holly, if you could please relay this message to the mayor and the city council I would much appreciate it. Thank you so much for your help and kindness. If you or anyone else has any questions for me, please feel free to email me at hcall@dsdmail.net or call me at 801-856-0983.

Take care and see you around,

Hadyn

CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

S U B J E C T: Schematic Plan for Kestrel Bay Estates PUD Subdivision

ACTION TO BE CONSIDERED:

Approve the schematic plan for the Kestrel Bay PUD Subdivision pursuant to the recommendation and findings established by the Planning Commission as set forth in the enclosed August 6, 2013 City Council Staff Report and the July 11, 2013 Planning Commission Staff Report.

GENERAL INFORMATION:

See enclosed staff report prepared by David Petersen.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



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DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: August 23, 2013

SUBJECT: **KESTREL BAY SCHEMATIC PLAN**

RECOMMENDATION

Approve the schematic plan the for Kestrel Bay PUD Subdivision consisting of 50 lots on 8.68 acres located at approximately 500 South and 200 West pursuant to the recommendation and findings established by the Planning Commission as set forth in the enclosed August 6, 2013 City Council Staff Report and the July 11, 2013 Planning Commission Staff Report [Note: the public hearing was closed at the August 6th City Council meeting].

BACKGROUND

The City Council tabled action regarding this agenda item on August 6, 2013, to allow members of the governing body to "look at traffic patterns after school starts". The applicant, Scott Balling, received a recommendation for schematic plan approval from the Planning Commission on July 11, 2013. Additional background information is contained in the attached staff reports. Moreover, this report also includes information provided at the August 6th meeting by the applicant and others; and it also includes an email (and attachments) from Wes Holmes dated August 22, 2013.

Respectively Submitted

David Petersen
Community Development Director

Concur

Dave Millheim
City Manager



FARMINGTON CITY

SCOTT C. HARRERTSON
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CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Christy Alexander, Associate City Planner

Date: AUGUST 6, 2013

SUBJECT: APPROVAL OF A SCHEMATIC PLAN FOR KESTREL BAY ESTATES
PUD SUBDIVISION

RECOMMENDATION

1. Hold the public hearing.
2. Approve the attached Schematic Plan for Kestrel Bay Estates PUD Subdivision (50 lots), located at approximately 300 South 1400 West, subject to the same conditions and findings established previously by the Planning Commission on July 11, 2013 as set forth in the attached supplemental information including the conditions to add a connection to 620 South and move the Frontage Road connection further to the south.

BACKGROUND

The applicant, Scott Balling, is requesting Schematic Plan approval for a 50 lot PUD subdivision consisting of single-family homes on property located at approximately 500 South 200 West. The proposed schematic plan contains a total of 50 lots on 8.68 acres of property. The applicant wishes to build these homes and market them to the "empty-nester" community that is looking to downsize and have their yards be maintenance free. The underlying zone for this property is an R-8 zone and an AE zone. Under conventional zoning, the developer would be allowed approximately 32 multifamily units on the R-8 property and six (one acre) single family lots on the AE property. The applicant does not wish to build multifamily housing which is allowed in the R-8 but instead wishes to rezone the AE property to R and create an upscale, smaller lot, single-family home subdivision patterned after the Fairways of Oakridge just east of the golf course. In order to do this he would need to obtain the rezone of the AE to R and present a yield plan that shows higher density for giving up open space within development. The applicant has provided a yield plan that shows he could develop the entire property (if rezoned to R) with 61 lots. However, the applicant has decided to

lower the density and only develop 50 lots. The General Plan calls for this area to be zoned Low Density Residential (LDR). An R zone is consistent with this General Plan designation as many other areas under the larger LDR area are zoned R as well. Since it is a PUD, the approval process consists of a Schematic Plan & Preliminary PUD Master Plan, Preliminary Plat and Final Plat & Final PUD Master Plan. The applicant will bring in the Preliminary PUD Master Plan in at the Preliminary Plat stage. Right now he is trying to get a read on the Schematic Plan layout before he moves forward.

Due to the nature that it is a PUD, the developer has proposed a site plan that does not conform to many of the City's zoning codes (for instance there are no sidewalks on the interior of the project. The master transportation plan for this area called out an extension of 450 South westward through to the frontage road. The applicant did not initially feel this was feasible and provided on his plan a paved trail behind the northerly homes to be extended westward from 450 South to the Frontage Road instead of a public road. This was an item of much debate at the last three Planning Commission meetings amongst the residents along 620 South that were promised it would go through as a street many years ago and the residents along 450 South who are opposed to the street going through. The Planning Commission voted at the May 30th meeting that the applicant would need to work with the residents and should bring in a new plan within 30 days showing the 450 South road connecting to the frontage road, with a road that meets City standards. The applicant, however, never brought in a new plan and the Planning Commission then voted at the June 27th meeting to recommend it for denial due to the road not connecting through.

The applicant then pulled his application the next day and submitted a new plan for consideration, which shows 450 South connecting through. The City's Engineer and Traffic Engineer have both looked at the new plans and agree the new connection will work with traffic. The new connector will have sidewalk going down the northern side for the pedestrian connection. The applicant had to remove one lot in order to make this new plan work. He also made two of the lots flag lots in order to remove the cul-de-sacs. These flag lots must have a shared access agreement to allow for a common drive aisle to their homes. Staff feels this new plan is much better providing for proper connectivity as well as removing those privately maintained cul-de-sacs. Now all of the roadways will be dedicated to the City. The new plan erased the connection out to 620 South and after much debate at the Planning Commission meeting on July 11th, the Commission placed a condition that the 620 South connection be reinstated so as to provide three connections out of the subdivision. The City Engineer does not agree with reinstating the 620 South connection so this will have to be a decision of the Council whether to reinstate it or not. The Planning Commission also recommends that the applicant move the Frontage Road connection to the south a couple lots. The applicant has not brought in a new plan showing these added conditions and changes to the connectivity in hopes that the City Council will approve his plan as is or will instruct him as to what should be shown on the Preliminary Plat.

Also the City Council must approve a rezone to the property in order for this subdivision to develop as proposed. Many residents would like to see the AE portion of this site remain 1 acre lots but may be unaware that the R-8 portion of the lot could see 32 multifamily units built. The Planning Commission was very hesitant to recommend the rezone due to the fact that the applicant could walk away and the Leavitt's property would be up-zoned for another developer to put in more intense development without the certainty of a site plan duly considered. They decided to table the re-zone until further along in the process at Preliminary Plat level where the applicant receives his first vesting.

There are also no sidewalks proposed along the streets on the interior of the project, the applicant feels that the residents would like to walk on the trail system on the very interior of the project as well as keep the streets quiet. This was an item of much debate whether or not to force the applicant to include sidewalks on all roadways. As taken from the zoning ordinance "the intent of the PUD is to promote flexibility in site design, to achieve, for example, the clustering of buildings, the mixture of housing types, and the combining of housing with supplementary uses such as commercial centers, business parks or other multiple use centers, etc. A PUD is a large scale, predominantly residential development in which the regulations of the underlying zone are waived to allow flexibility and innovation in site and building design in accordance with a PUD Master Plan approved by the Planning Commission and City Council.

Respectfully Submitted



Christy J. Alexander
Associate City Planner

Review & Concur



Dave Millheim
City Manager



Planning Commission Staff Report July 11, 2013

Item 4: Schematic Plan for the Kestrel Bay Estates PUD Subdivision

Public Hearing:	Yes
Application No.:	S-5-13
Property Address:	Approximately 500 South 200 West
General Plan Designation:	LDR (Low Density Residential)
Zoning Designation:	AE (Agricultural Estates) & R-8 (Multi-Family Residential)
Area:	8.68 Acres
Number of Lots:	50 lots
Property Owner:	Leavitt Properties LLC
Agent:	Scott Balling

Request: *Applicant is requesting a recommendation for Schematic Plan approval for the Kestrel Bay Estates PUD Subdivision.*

Background Information

(Applicant pulled his application after the June 27, 2013 Planning Commission Meeting and has resubmitted a new plan.)

The applicant, Scott Balling, is once again requesting a recommendation for Schematic Plan approval for a 50 lot PUD subdivision consisting of single-family homes on property located at approximately 500 South 200 West. The proposed schematic plan contains a total of 50 lots on 8.68 acres of property. The applicant wishes to build these homes and market them to the "empty-nester" community that is looking to downsize and have their yards be maintenance free. The underlying zone for this property is an R-8 zone and an AE zone under a PUD would be allowed approximately 32 multifamily units on the R-8 property and 1 acre single family lots on the AE property. The applicant does not wish to build multifamily housing which is allowed in the R-8 but instead wishes to rezone the AE property to R and create an upscale, smaller lot, single-family home subdivision. Since it is a PUD, the approval process consists of a Schematic Plan & Preliminary PUD Master Plan, Preliminary Plat and Final Plat & Final PUD Master Plan. The applicant will bring in the Preliminary PUD Master Plan at the Preliminary Plat stage.

The Planning Commission provides a recommendation to the City Council regarding the Schematic Plan. Due to the nature that it is a PUD, the developer has proposed a site plan that does not conform to many of the City's zoning codes (for instance there are no sidewalks on the interior of the project. The master transportation plan for this area called out an extension of 450 South westward

through to the frontage road. The applicant did not initially feel this was feasible and provided on his plan a paved trail behind the homes to be extended westward from 450 South to the frontage road instead of a road. This was an item of much debate at the last two Planning Commission meetings amongst the residents along 620 South that were promised it would go through as a street many years ago and the residents along 450 South who are opposed to the street going through. The Planning Commission voted at that May 30th meeting that the applicant would need to work with the residents and should bring in a new plan within 30 days showing the 450 South road connecting to the frontage road, with a road that meets City standards. The applicant, however, never brought in a new plan and the Planning Commission then voted at the June 27th meeting to recommend it for denial due to the road not connecting through. The applicant then pulled his application the next day and submitted a new plan for consideration, which shows 450 South connecting through. The City's Engineer and Traffic Engineer have both looked at the new plans and agree the new connection will work with traffic. The new connector will have sidewalk going down the northern side for the pedestrian connection. The applicant had to remove one lot in order to make this new plan work. He also made two of the lots flag lots in order to remove the cul-de-sacs. These flag lots must have a shared access agreement to allow for a common drive aisle to their homes. Staff feels this new plan is much better providing for proper connectivity as well as removing those privately maintained cul-de-sacs. Now all of the roadways will be dedicated to the City.

Also the City Council must approve a rezone to the property in order for this subdivision to develop as proposed. Many residents would like to see the AE portion of this site remain 1 acre lots but may be unaware that the R-8 portion of the lot could see 32 multifamily units built. There are also no sidewalks proposed along the streets on the interior of the project, the applicant feels that the residents would like to walk on the trail system on the very interior of the project as well as keep the streets quiet.

As taken from the zoning ordinance "the intent of the PUD is to promote flexibility in site design, to achieve, for example, the clustering of buildings, the mixture of housing types, and the combining of housing with supplementary uses such as commercial centers, business parks or other multiple use centers, etc. A PUD is a large scale, predominantly residential development in which the regulations of the underlying zone are waived to allow flexibility and innovation in site and building design in accordance with a PUD Master Plan approved by the Planning Commission and City Council. A PUD shall be permitted as a conditional use in the R-8 zone" A separate conditional use application is not needed, it is implied with the approval of the PUD Master Plan that it is approved.

Suggested Motion:

Move that the Planning Commission recommends that the City Council approve the Schematic Plan for the Kestrel Bay Estates subdivision subject to all applicable Farmington City ordinances and development standards and the following conditions:

1. The applicant continues to work with the City and other agencies to address any outstanding issues remaining with regard to the Schematic Plan prior to Preliminary PUD Masterplan and Preliminary Plat approval;
2. The applicant obtain a rezone from AE to R for that portion of the proposed subdivision concurrent with Schematic Plan approval;
3. The applicant obtains a CLOMR for the entire property previous to Preliminary Plat approval;
4. The applicant must come to agreement with the Davis County Flood Control on the treatment of the water on this property prior to Preliminary Plat approval;

5. Applicant must receive approvals of the Preliminary Plat/Preliminary PUD Master Plan from the Planning Commission and Final Plat/Final PUD Master Plan from the City Council to record the proposed subdivision;
6. The applicant must obtain and record a cross-access agreement for the two drive aisles when the plat is recorded;
7. Any additional conditions that the Planning Commission deems appropriate for the PUD.

Findings for Approval:

1. The proposed schematic subdivision is in substantial compliance with all subdivision and zoning requirements for a schematic subdivision approval including;
 - a. A completed application;
 - b. Minimum lot sizes as set forth in the R-8 & proposed R zone;
 - c. Description and preliminary layout of utilities and other services required.
2. The proposed subdivision is desirable in that the platting of the property in this area will provide a cleaner description and record of the properties and residences in the subject area.
3. The proposed Schematic Plan submittal is consistent with all necessary requirements for a Schematic Plan as found in Chapter 3 of the City's Subdivision Ordinance.

Supplemental Information

1. Vicinity Map
2. Schematic Plan
3. Building Elevations
4. Floor Plans

Applicable Ordinances

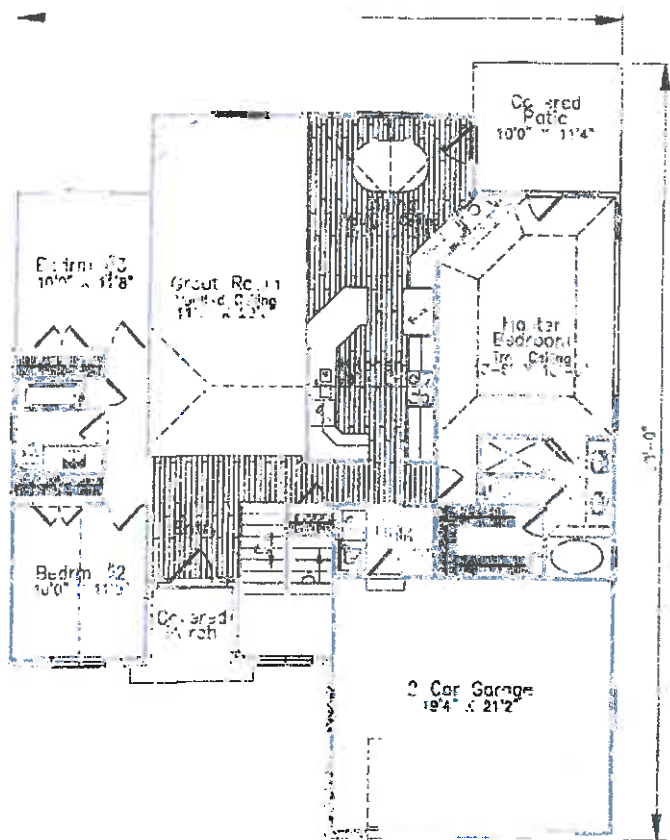
1. Title 12, Chapter 3 – Schematic Plan
2. Title 12, Chapter 6 – Major Subdivisions
3. Title 12, Chapter 7 – General Requirements for All Subdivisions
4. Title 11, Chapter 13 – Multi-Family Residential Zones
5. Title 11, Chapter 10 – Agricultural Zones
6. Title 11, Chapter 11 – Single Family Residential Zones
7. Title 11, Chapter 13 – Multi Family Residential Zones
8. Title 11, Chapter 27 – Planned Unit Development



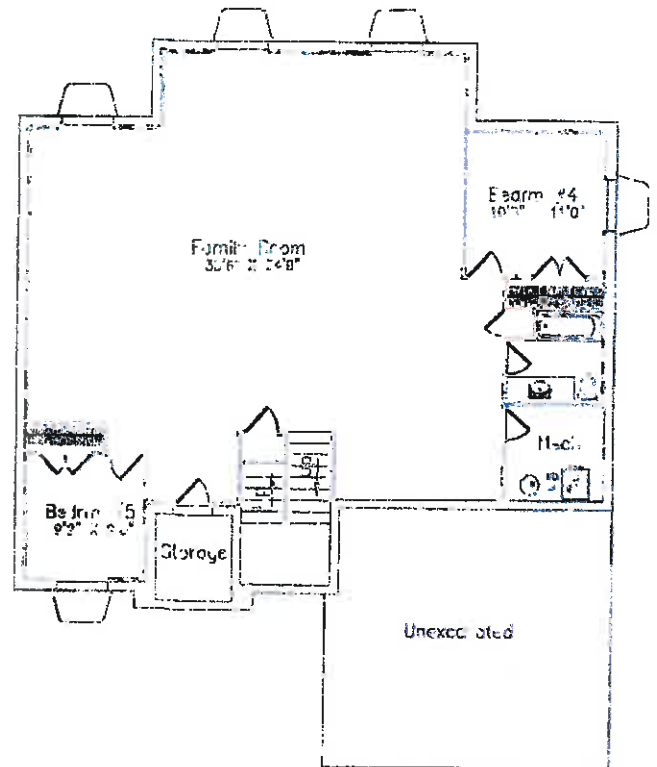
Kestrel Bay Estates PUD Vicinity Map







Main Floor



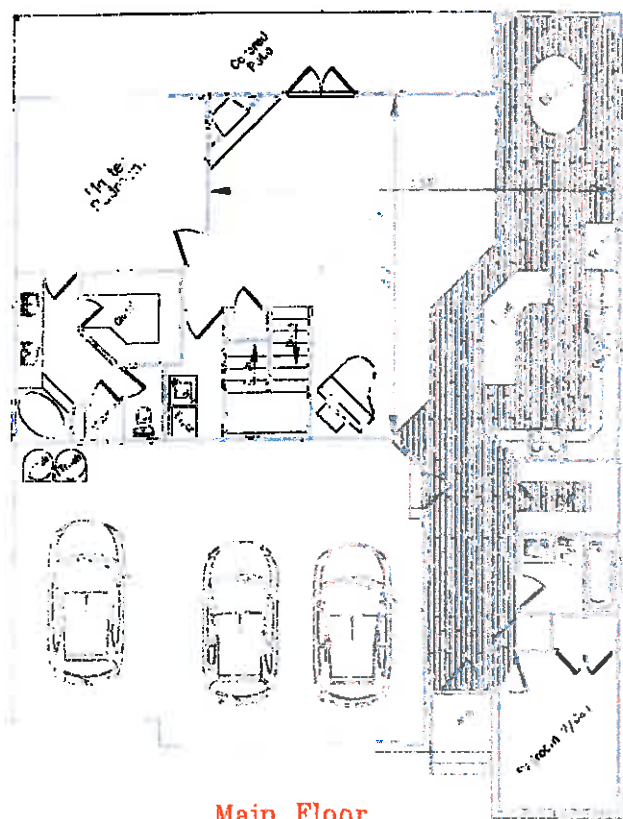
Basement



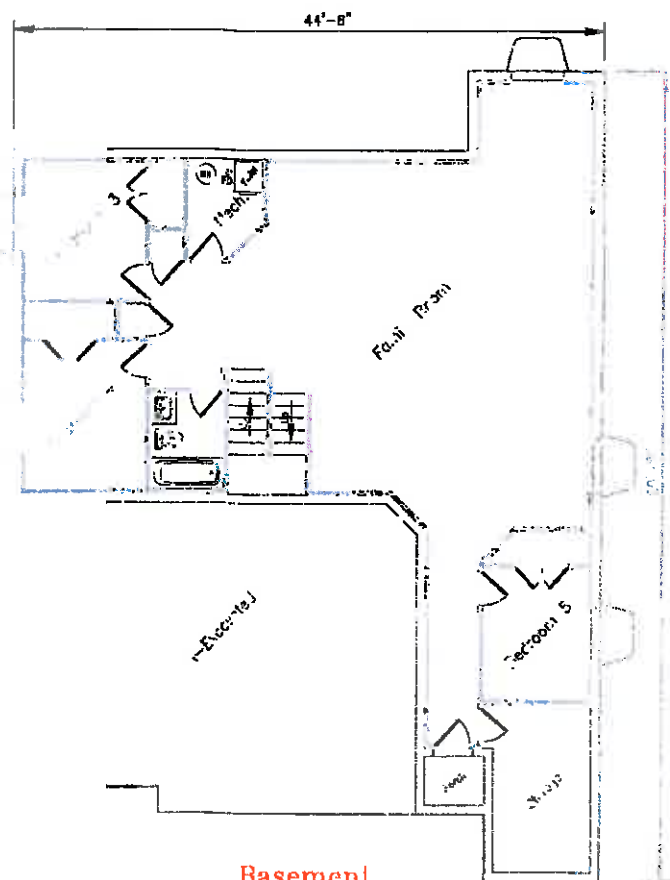
Cooper Floor Plan

Main Floor Area 1,590 sq.ft.
Basement Floor Area 1,510 sq.ft.

B Balling
E Engineering



Main Floor



Basement

Falcon Floor Plan

Main Floor Area 1,640 sq.ft.
Basement Floor Area 1,513 sq.ft.

#5. Scott Balling – (Public Hearing) – Applicant is requesting a recommendation of Schematic Plan approval for the Kestrel Bay Estates PUD subdivision (51 lots) on property on 8.68 acres located at 500 South 200 West in AE & R-8 zones. (S-5-13)

Christy Alexander explained at the last Planning Commission meeting the Commission recommended the City Council deny the Applicant's plan. The Applicant withdrew his application and resubmitted it with a new plan, which included the connection to 450 South as the Planning Commission suggested. The new plan also removed 620 South connection, but added in a pedestrian trail to 620 South. She stated the City's Public Works agencies would also review the plans, if approved, to determine what safety measures would be appropriate for 450 South. She also clarified the Planning Commission and City staff did not request the connection at 620 South be removed.

Scott Balling, 1995 N 100 E Centerville, stated the City's Engineer, Paul Hirst, gave the Applicant a sketch of how the City would like the connection, which included the connection on 450 South. Christy Alexander clarified Paul Hirst said he provided the 450 South connection with a road down the property line as an option, but did not state it was the official opinion of the City. The Applicant continued to explain he does not want a lot of entrances as he loses the security of the development. Rebecca Wayment asked the applicant to clarify if he intends to have an age requirement in the CC&R's? He stated no. He was worried it could create problems for the Homeowners Association down the road, but he would like to heavily market the subdivision to the "empty-nesters."

Bob Murri opened the Public Hearing at 7:42 p.m.

Wes Holmes, 39 W 620 S, stated he supports the Schematic Plan as presented by the Applicant. He also presented 19 additional signatures to the previous petition asking the City to enforce the City's Master Transportation Plan.

Shannon Hicks, 511 S 111 W, is one of the current owners of the Leavitt property which the Applicant is purchasing for the Kestrel Bay Estates PUD subdivision. She stated she does not like the connection on 450 South. She feels it will create dangerous circumstances for children.

Rich McKenna, 62 E 450 S, is opposed to the Schematic Plan. He stated he believes in connectivity; however, he feels 450 South, combined with 75 West, is already a road that majorly connects the community. He stated when the Master Transportation Plan was created, the City wanted to connect all streets to the Frontage Road; however, there are already 8 streets doing so between State Street and Centerville. He would like the City to preserve 450 South as a safe haven for the children to walk.

Matt Tittle, 65 E 450 S, stated the bottom line for him is safety. He stated 450 South is crowded with children going the elementary and junior high schools. Increasing the traffic on 450 South would be a disaster as it creates a big hazard to the children.

Lance Drollinger, 450 S 100 E, also stated keeping the 450 South will greatly increase traffic as it would be an attractive route for drivers to take. The resident provided a map showing the narrowness of the road on 450 South. He also provided a letter to the Planning Commission regarding his opinion on the connection of 450 South.

Logan Peterson, 68 E 450 S, stated he is against the presented plan. He feels it does not meet typical standards for a road as it measures 35 feet wide asphalt to asphalt. He stated the 450 South

would provide the shortest route for drivers to get to 200 East, which would heavily increase commuter traffic. 450 South also provides a considerable risk compared to 620 South as 60% of 620 South road is a “buffer zone” for pedestrians.

Jenny Brown, 161 E 450 S, stated that on the opposite side of the street from her home, there is no sidewalk, gutter or parking strip. She stated depending on where you measure, the street is approximately 27 to 29.5 feet wide asphalt to asphalt. She is very concerned about the width of the street as it does not provide any buffer for children or others using it. She also expressed concern regarding the road’s steepness as there are regularly accidents on 450 South during the winter.

Kathy McGill, 446 S 200 E, stated she is opposing connecting 450 South to the Frontage Road as it will greatly increase traffic and will compound all current problems. She stated there are numerous accidents that take place during the winter on this road. She also feels there should be a cross-walk on 200 East to 450 South for the children to use.

Shirley Morris, 10 E 450 S, stated the amount of children that cross 450 South is unbelievable. She stated she is always calling to cars to slow down to help protect the children. She said the curve down the road helps to slow the vehicles, but if the road is a through street to the Frontage Road, she doesn’t know what will slow the vehicles down.

Carolyn Toronto, 47 E 450 S, stated that since everything keeps coming back to the City’s Master Transportation Plan, then why not change it. She brought an application she is submitting to change it. She expressed frustration of the problems they have seen that no formal traffic study could show as she has lived on 450 South for 33 years. She feels as it stands, this plan is the least desirable situation.

Ken Hamilton, 24 W 620 S, stated he is in favor of the current plan. He feels 450 South should share the load of traffic that is currently coming down 620 South. There is currently a stop sign on 620 South that drivers are already running. Adding additional traffic will only worsen the circumstance.

Kim Farr, 82 E 620 S, questioned the Commission regarding whether the Frontage Road is a city or UDOT road. **David Petersen** answered it is a hybrid as it is a state roadway, but the City maintains the road. She continued to ask if the Applicant could put an entrance from the Frontage Road into the subdivision, then a median with an exit on the other side so all traffic would be directed onto the Frontage Road. She also suggested decreasing the speed limit down to 25 to 30 miles per hour on the Frontage Road near the development’s entrance.

Cindy Anderson, 442 S 10 W, said in the 19 years she lived there, which included raising little kids, she would get very upset with the speed of drivers coming down from 200 East. She stated she was always asking for additional assistance from the police department to help monitor the speeds of cars. She wondered if speed bumps or even a 3-way stop could be put in on the 450 South and 200 East intersection, but the City said they couldn’t.

Brandon Halliday, 517 S 10 W, stated he has a lot of concerns with the road on 450 S and was also here to represent his parents, Paul and Diane Halliday that live on 448 S 75 W. He stated if the Commission saw an accident where a child was injured, the decision would already be made and this connection on 450 South would not be created. He also stated that his parents feel the value of their home may decrease if the road is built. If there is a desire to have a connector road, why not move Kestrel Bay Drive over to approximately Lot 116? That would make the 450 South road less of a

straight through road to the Frontage Road which will slow traffic down. He also suggested that there needs to be a 3-way stop on the 450 South and 75 West intersection.

Jim Flacco, 36 E 620 S, feels that a good compromise for residents on both 450 South and 620 South would be to put the street in the middle of the development on Frontage Road as explained by **Brandon Halliday**. This would allow for residents on both sides to be content.

Bob Murri closed the Public Hearing at 8:26 p.m.

Scott Balling stated he does not have an economic advantage to either plans, but has tried to match the guidelines as provided by the City. When he initially presented his plans, there was an island (see **Kim Farr's** comment) on the Frontage Road, but was told by the City's Traffic Engineer and Public Works department that it needed to be removed.

Brigham Mellor asked the Applicant his feelings were about moving Kestrel Bay Drive to Lot 116. **Scott Balling** stated he would prefer the entrance from the Frontage Road to remain where it is as to increase the security by limiting the amount of cars driving through the entire development. Commissioners also asked resident **Wes Holmes** his opinion on the compromise. **Wes Holmes** said he feels it does make sense to move the entrance to approximately Lot 116. He also said he feels it would also help to relieve traffic from 620 South.

Rebecca Wayment wanted to know if the City has looked at putting a cross walk on 200 East and 450 South. **David Petersen** said staff will look into it. She continued to also ask if stop signs and a cross walk be put in at the proposed connection of 450 South and 75 West to also protect the children when walking to school. **Rebecca Wayment** also expressed frustration with the current plan because she feels the development needs to have a compromise for residents on 450 South and 620 South to share the traffic burden.

Brett Anderson and **Bob Murri** would like to see 3 access roads coming out of the development to help better distribute traffic.

David Petersen stated the Applicant has used the Fairways of Oakridge PUD as a pattern for his development. **Scott Balling** presented the Plats of the Fairways PUD for the Commissioners to review and compare.

Commissioners felt that although the Fairways is a good standard, it also is a destination whereas the Kestrel Bay Estates PUD connects two major neighborhoods. **Scott Balling** stated he is trying to eliminate multi-family housing in this area, but expressed frustration with the many requests as it ruin the overall goals he's trying to create for the development.

Michael Nilson was disappointed the entrance on 620 South was removed, but is very sensitive to property rights. He explained the Commission has to look out for the overall good of the community. In determining what's best for the community, the Commission has to remove the "what if's" because we don't have control over them. He still feels connectivity is the best situation for a City. He also feels making a 3-way stop at 450 South and 75 West would be appropriate as it will create an effective control point. He also believes that the Applicant has followed the City's Master Transportation Plan so although he is disappointed 620 South entrance was removed, he is still supportive of the current plan as he wants to support the Applicant's property rights.

Kris Kaufman agrees connectivity is important, but was still frustrated 620 South was removed. He feels a fair compromise would be to have 3 access roads into the development. He also feels the 3-way stop at 450 South and 75 West is a good idea. He does not feel we should compare this development to that of the Fairways of Oakridge PUD as Kestrel Bay Estates is part of a larger subdivision. **Bob Murri** agreed with his comments.

Brad Dutson stated if it makes the residents feel better, he is comfortable with moving the Frontage Road entrance to approximately Lot 116 and is also in favor of a connection to 620 South. He believes stop signs are critical to help drivers slow down.

Rebecca Wayment said she would also like to see an entrance on 620 South. She believes having those connections will not de-rail this development as there are still many interested in coming to Farmington.

Bob Murri asked if moving Kestrel Bay Drive over to approximately Lot 116 will make a significant difference in traffic patterns. **David Petersen** said as the plan currently shows, the City's Traffic Engineer stated 450 South will not significantly attract more traffic. **David Petersen** continued saying he also believes the Traffic Engineer would agree that moving the road to Lot 116 would not make a difference either.

Brett Anderson suggested making a condition for the Applicant to put in a speed limit sign with a built-in radar. He feels this will help slow traffic, as well as the 3-way stop on 450 South and 75 West.

Brad Dutson also stated there were several emails received by staff from the residents of these areas.

A motion was proposed that the Planning Commission deny recommendation of the Schematic Plan to the City Council. **David Petersen** provided a brief background of this property, stating many developers looked at it, but would not pursue it. He explained the Applicant listened to the residents' desire of not having multi-family housing so he created a development that appropriate blends the R-8 zone. **David Petersen** suggested making the motion positive by approving the Plan based on certain conditions instead of simply denying it. He also explained adding recommendations for things like stop signs to a motion will mean the City police department will immediately review it.

Motion:

Rebecca Wayment made a motion that the Planning Commission recommend that the City Council approve the Schematic Plan for the Kestrel Bay Estates subdivision subject to all applicable Farmington City ordinances and development standards with the following conditions 1-7, as well as add conditions 8-12:

1. The applicant continues to work with the City and other agencies to address any outstanding issues remaining with regard to the Schematic Plan prior to Preliminary PUD Masterplan and Preliminary Plat approval;
2. The applicant obtain a rezone from AE to R for that portion of the proposed subdivision concurrent with Schematic Plan approval;
3. The applicant obtains a CLOMR for the entire property previous to Preliminary Plat approval;

4. The applicant must come to agreement with the Davis County Flood Control on the treatment of the water on this property prior to Preliminary Plat approval;
5. Applicant must receive approvals of the Preliminary Plat/Preliminary PUD Master Plan from the Planning Commission and Final Plat/Final PUD Master Plan from the City Council to record the proposed subdivision;
6. The applicant must obtain and record a cross-access agreement for the two drive aisles when the plat is recorded;
7. Any additional conditions that the Planning Commission deems appropriate for the PUD;
8. The applicant create a road to connect the Kestrel Bay development and 620 South;
9. A 3-way stop sign be put in at 75 West and 450 South;
10. A stop sign be placed at the Frontage Road into the Kestrel Bay development;
11. A speeding sign with a built-in radar be put in on 450 South for drivers coming from east to west to help slow traffic as they come closer to the school zone;
12. And the applicant include a sidewalk along the small connection from the Kestrel Bay development to 620 South road.

Kris Kaufman seconded the motion. Michael Nilson stated he does not disagree with the 620 S connection, but is still sensitive to the desires of the Applicant. The motion was unanimously approved.

Findings for Approval:

1. The proposed schematic subdivision is in substantial compliance with all subdivision and zoning requirements for the schematic subdivision approval including;
 - a. A completed application;
 - b. Minimum lot sizes as set forth in the R-8 & proposed R zone;
 - c. Description and preliminary layout of utilities and other services required.
2. The proposed subdivision is desirable in that the platting of the property in this area will provide a cleaner description and record of the properties and residences in the subject area.
3. The proposed Schematic Plan submittal is consistent with all necessary requirements for a Schematic Plan as found in Chapter 3 of the City's Subdivision Ordinance.

ZONE CHANGE APPLICATION

#6. Scott Balling – (Public Hearing) – Applicant is requesting a recommendation to rezone the Leavitt property (6.54 acres) located at approximately 500 South 200 West from AE (Agricultural Estates) to R (Residential) concurrent with his application for schematic plan for the Kestrel Bay Estates PUD subdivision. (2-2-13)

Christy Alexander explained the 6.54 acres of the approximate 8.68 acres of the development is currently zoned as AE but Applicant would like it to be rezoned as R. Staff recommends the Commission give the same recommendation to this agenda item as was given to the last item.

Scott Balling, 1995 N 100 E, explained that previous requests have been made to rezone all the property to an R zone; however, he does not have authority to make that change as the current property owners would like to leave it as it is currently zoned. Once he purchases the property upon Final Plat Approval, he will pursue making the property an R zone.

Bob Murri opened the Public Hearing at 9:28 p.m.

Wes Holmes, 39 W 620 S, asked what the benefit of changing the zone from AE to R at this meeting. Commissioners discussed that if conditions are not met by the Applicant, than the Commission would have already given the R zone, which includes higher density housing than the AE zone, to the property owner. Staff recommended tabling the zone change until the Preliminary Plat is presented.

Brandon Halliday, 517 S 10 W, feels it would be in the best interest of the residents and the Planning Commission to hold off on the rezone until the development is ready to move forward.

Michael Nilson clarified that a City cannot down zone a property without just compensation as it would be a taking and would devalue the property. He also clarified that the Applicant is allowed 10 more lots than currently shown on the plan so it is very rare that a developer is not maximizing the number of lots allowed on a property.

Robert Leavitt, 511 S 111 W, expressed frustration with the Applicant's current plans.

Lance Drollinger, 450 S 100 E, feels the builder has good intentions so he is not against the rezone.

Shannon Hicks, 511 S 111 W, is in favor of this development so apartments are not developed on the R-8 zone; however, she does not want to lose the R-8 zone until it is purchased.

Bob Murri closed the Public Hearing at 9:38 p.m.

Commissioners discussed the zone change; they feel it would be appropriate to wait on "up-zoning" the property until the Applicant is ready for Final Plat Approval. **David Petersen** suggested if this item is tabled to still move the Schematic Plan on to City Council. The zoning of the property can still be done together in the Applicant's next steps.

Motion:

Brett Anderson made a motion that the Planning Commission table this item until staff determines the appropriate course of action in moving this project forward and until the City Council approves the Schematic Plan. **Rebecca Wayment** seconded the motion. Commissioners Brad Dutson, Brett Anderson, Brigham Mellor, Kris Kaufman and Rebecca Wayment approved the motion. Commissioner Michael Nilson denied the motion as he feels the property owner has the right to petition for a zone change as the ordinance does not require the property owner to follow through on presented plans.

ZONING TEXT CHANGES

#7. Farmington City – (Public Hearing) – Applicant is requesting a recommendation to amend Section 11-28-180 (a)(9) of the Zoning Ordinance regarding roof pitch to enable flat or flatter roofs. (ZT-3-13)

David Petersen stated the City can apply reasonable standards for all dwellings, which is why the additional 9 standards included in the ordinances were created, including requirements for roof

**Additional Kestrel Bay
Information**

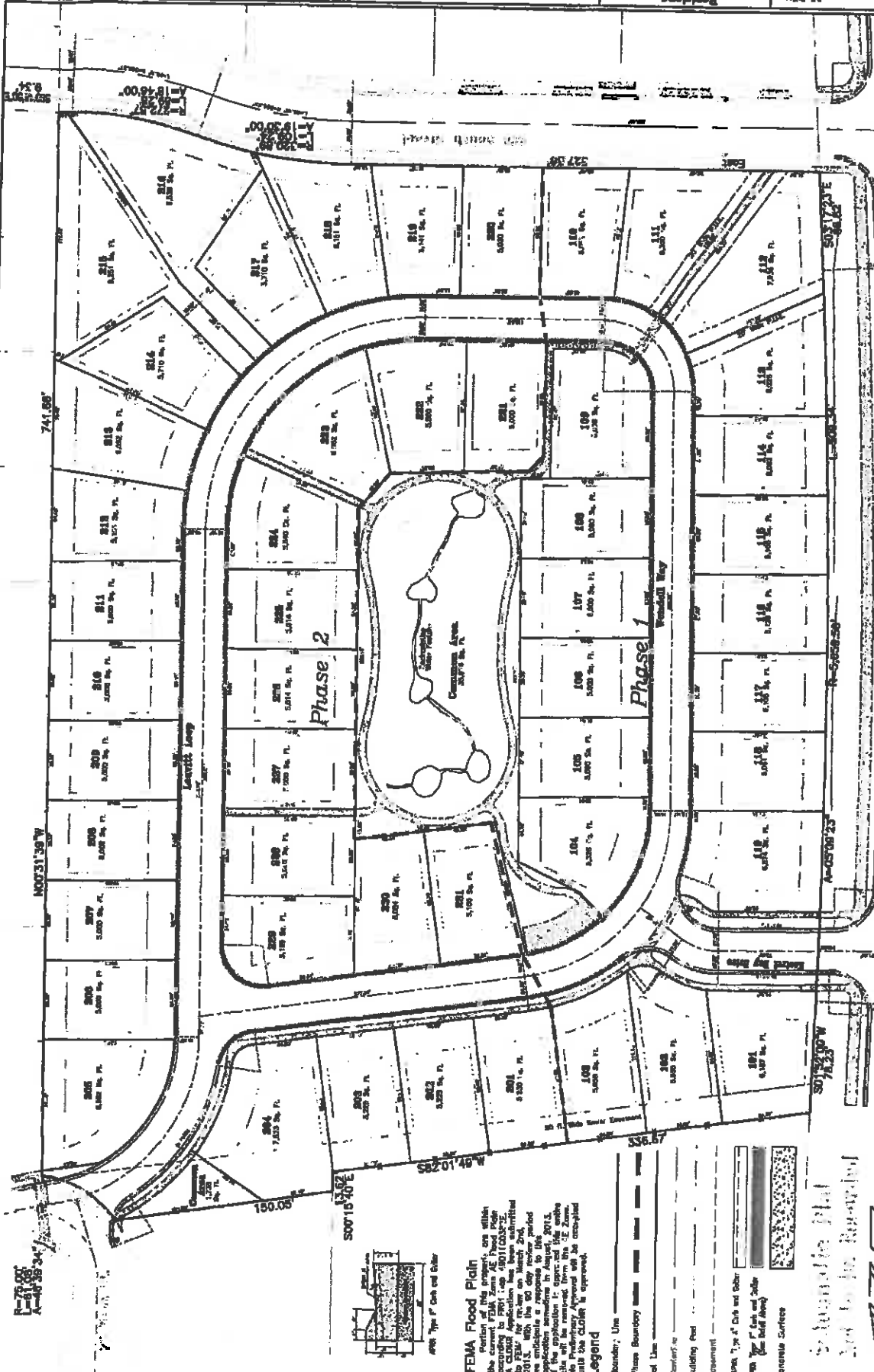
**Provided at the August 6,
2013 City Council Meeting
By the Applicant and others**

Buttercup	02, Bldg
Date Merged	4-24-13
Payroll	4-5, Bldg
Checked By	7.3, Bldg
Estimated Date	8-08-13
File Number	

[illegible]

Kestrel Bay Station P.U.D.
Bohematto Site Plan

Ballinger Engineering
Civil Engineering • Surveying • Planning
225 East Pecos Lane
P.O. Box 808
Cortez, Utah 81301
Phone: (801) 288-7371
Fax: (801) 288-6418
Email: info@ballinger-engineering.com



100

100

FEMA Flood Plain

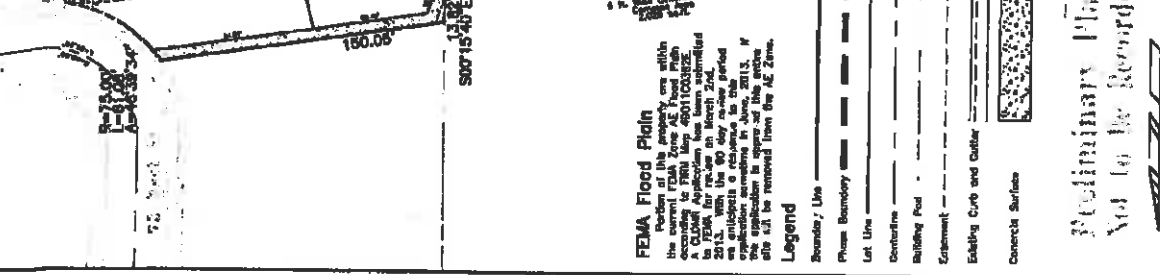
Portion of this project area within the current FEMA Zone AE Flood Plain is designated as FIRM 15-03032-E. A CLOUT Application has been submitted to FEMA for review on March 2nd, 2013 with the 90 day review period. The applicant anticipates a response to the application sometime in August, 2013. Once the application is approved, the entire project will be removed from the AE Zone. In the interim, Approval will be accepted into the CLOUT is approved.

Legend

boundary, line
these boundary lines
of line
conform to
building feet
equipment
from 7" x 4" Oak and Cedar
with 1/2" Oak and Cedar
(see Detail 100)
concrete surface

[illegible]

Balling Engineering
Civil Engineering • Surveying • Planning
320 East Engle Lane
P.O. Box 408
Candorville, Utah 84014
Phone: (801) 282-7237
Fax: (801) 212-0418
Candorville, Utah 84014



FEMA Flood Plain

Portion of the property are within the current FEMA Zone AE Flood plain according to FIRM Map 48011C03R02Z. A FEMA Application has been submitted to FEMA for review on March 2nd, 2013. With the 90 day review period on anticipated a response to this application sometime in June, 2013. If the application is approved the entire site will be removed from the AE Zone.

Legend

— **Boundaries, Lines** —

Phase Boundary

Lot Line —

Centerline —

Building Pod -

— — — — —

Environ Monit Assess (2008) 142:111–124

Power over Time

Concrete Surfaces

Figure 1

1

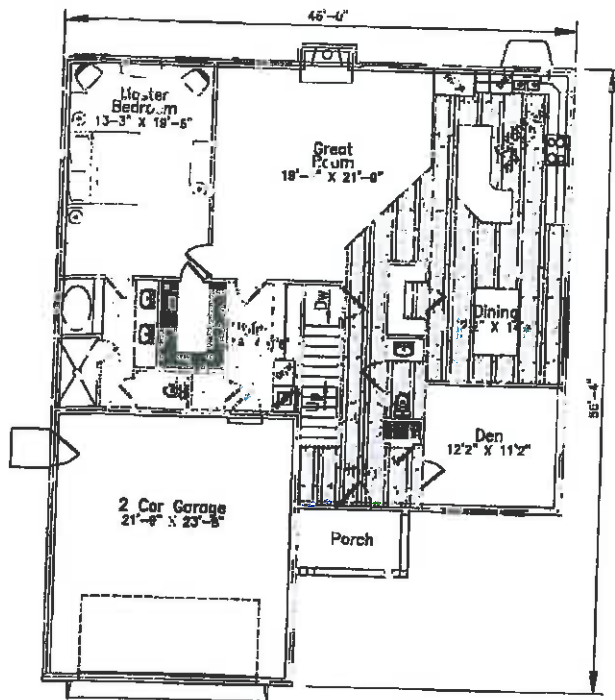
1828

8

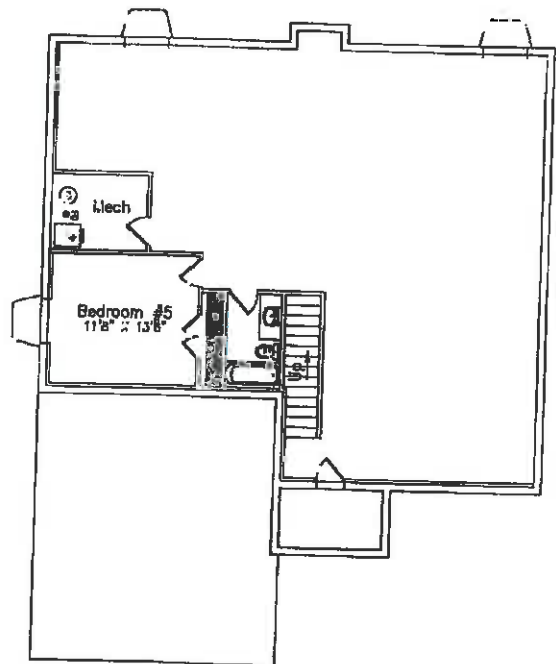
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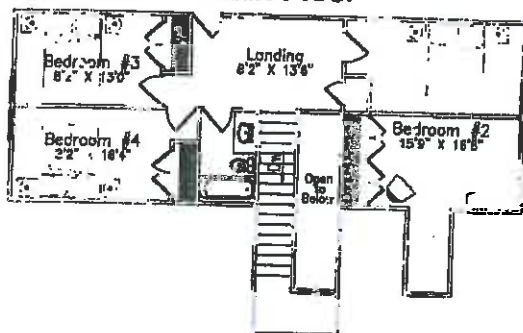
1



Main Floor



Basement



2nd Floor

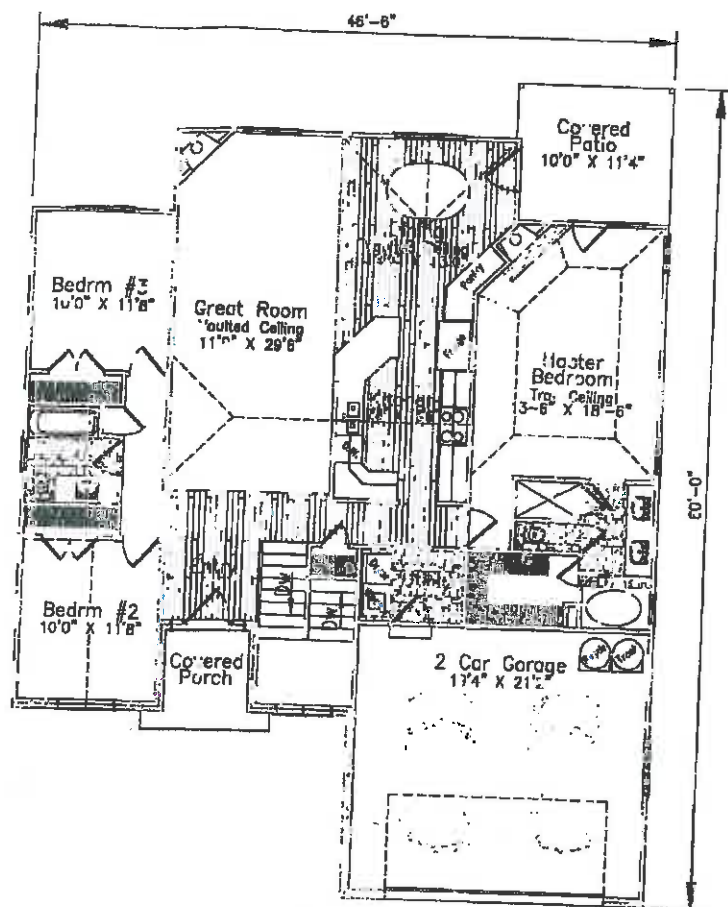
Barbary Floor Plan

Second Floor Area	717 sq.ft.
Main Floor Area	1,514 sq.ft.
Basement Floor Area	1,064 sq.ft.

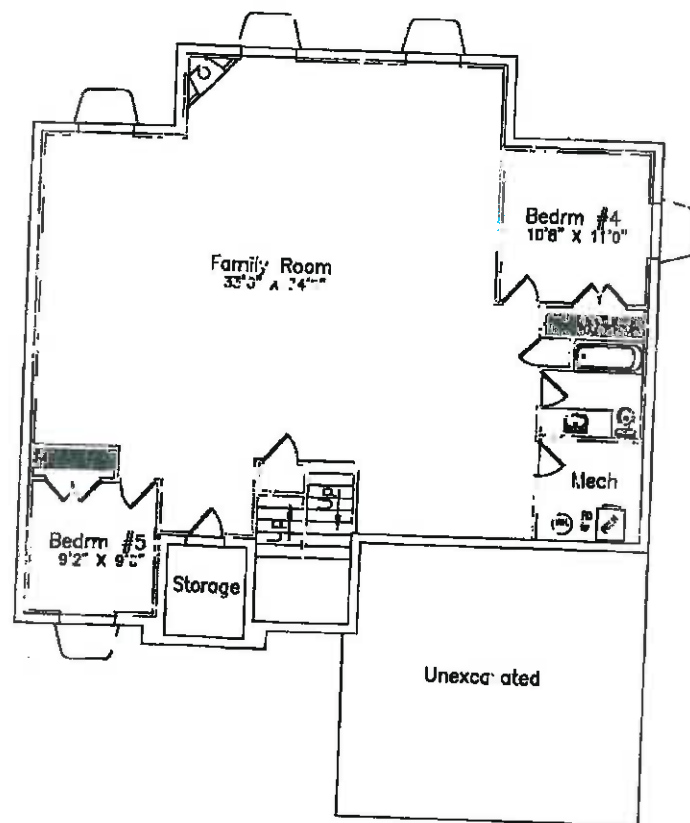
Balling Engineering



Exhibit D-1



Main Floor



Basement



Cooper Floor Plan

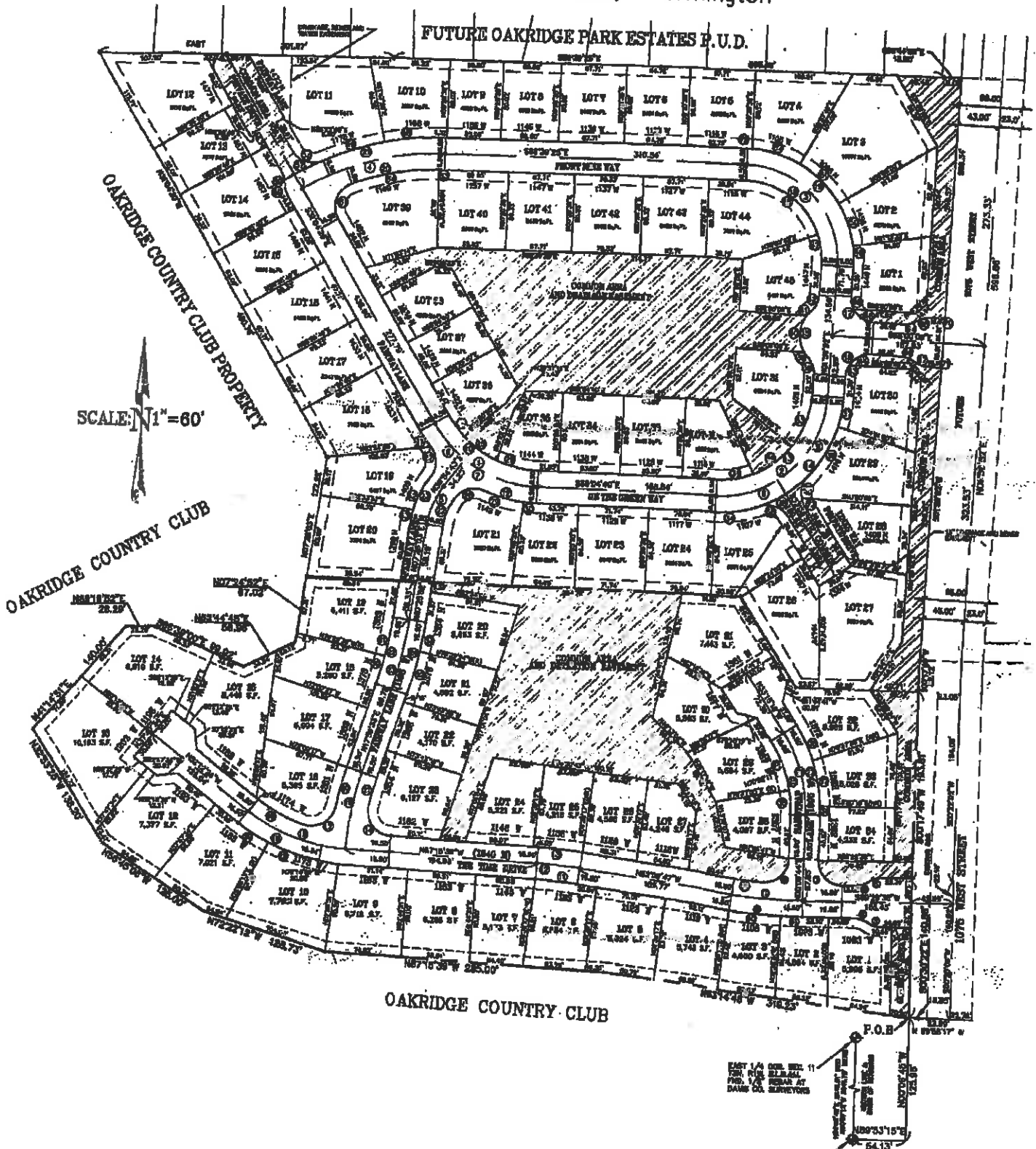
Main Floor Area 1,590 sq.ft.
Basement Floor Area 1,510 sq.ft.

B Balling
E Engineering

Exhibit D-2

The Fairways of Oakridge P.U.D.

1400 North 1075 West, Farmington





Cory Ritz, Farmington City Council Member

Aug 2, 2013

Cory,

I went to the planning commission public hearing last evening. My first time in the new city building. A few observations:

1. The paintings + photos in the council chambers are beautiful.
2. The sound system absolutely SUCKS! Could hardly understand what was being said & I hear pretty well. Can only imagine what people with hearing aids go through. Too much echo? The sound just disappears into those high ceilings. Sit down in the audience seats — you will understand what I mean. The commission/council members need those small face mikes like performers ~~who wear~~. Unless they talk directly into the microphone, one cannot hear much of anything except noise + mumbling. Went home with a headache from the experience. Big difference from the old council chambers.
3. Need a curtain or screen system for the large window behind the rostrum. Could hardly see the commission members for the glare, and the overhead screen was also hard to see because of the glare.
4. Just my personal take — the rostrum is so high, I felt like I was in a courtroom instead of council room. Very intimidating to most people — not good for community/council relations.

The old council chamber was comfortable, one could see + hear well and for me, made the council seem more approachable, because their seating arrangement was much lower, and closer to the level of their constituents.

Had to say something! Best Regards!

Darrell Lako

Petition to the Farmington City Planning Commission, City Council, Mayor and Staff by the residents that live along or about 620 South/ Continental Drive:

It has come to our attention, we the residents that live along or about 620 South/ Continental Drive in Farmington, Utah, that an application has been submitted to Farmington City for the approval of the Kestral Bay subdivision (#S-5-13). Although the development appears to have merit we specifically object to the plans disregard of the Farmington City's Master Transportation Plan in that the road design does not allow for east west traffic flow along 450 South. We submit that an alignment must be made whereby 450 South is connected from 200 East to the Frontage Road through the subject proposed subdivision allowing for an equitable east west distribution of traffic through the area consistent with the Farmington City Master Transportation Plan.

We therefore petition Farmington City's Planning Commission, City Council, Mayor and Staff to enforce the Farmington City Master Transportation Plan 2009 Roadway Functional Classification Plan as adopted by Farmington City in the City Master Transportation Plan Addendum. Respectfully submitted on or about the 30th day of May, 2013 by the residents that live along or about 620 South/ Continental Drive as follows:

Wes Holmes 39 W 620 S 5/28/2013
WES HOLMES Farmington, UT 84025

Jill D. Holmes 39 W. 620 So. 5/28/13
JILL D. HOLMES Farmington, Utah 84025

Ali Overton 59 W. 620 S. 5/28/13
Ali Overton Farmington, UT 84025

Mike Overton 5/28-13

Mike Overton 5/28/13
Ken Hamilton 24 W 620 South

Ken Hamilton 24 W 620 South 5/28/13

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TONY ARMER

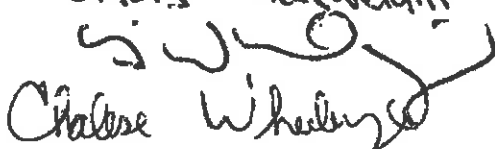
Jacy Gray

Jimmy B Feichko

Clarice C. Feichko

Clarice C. Feichko

CHRIS WHEELWRIGHT


Chaise Wheelwright

CHAISE WHEELWRIGHT

38 W 620 S
FARMINGTON

5-28-13

38 W 620 S
FARMINGTON UT 84025

5-28-13

36 E 620 S.
FARMINGTON UT 84025

5-28-13

36 E. 620 South
Farmington, Utah 84025

5-28-13

54 E. 620 S. FARMINGTON, UT 5/28/13

" " " "

5/28/13


Petition to the Farmington City Planning Commission, City Council, Mayor and Staff by the residents that live along or about 620 South/ Continental Drive:

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Kim Farr 82 E. Continental Dr. 5/29/13

 Douglas Farr 82 E CONTINENTAL DR. 5/29/13


Ryan Hale  92 E. 550 S. 5/29/13

Claudia Hale  92 E. 550 S. 5/29/13

Jennie McCoy  116 E. 550 S. 5/29/13

 David McCoy  116 E. 550 S. 5/29/13

Chejsea Ouelham  580 S. 150 E. 5/29/13

 Jeff Morrell 180 E 550 S. 5/29/13

Petition to the Farmington City Planning Commission, City Council, Mayor and Staff by the residents that live along or about 620 South/ Continental Drive:

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Although the development appears to have merit we specifically object to the plans disregard of the Farmington City's Master Transportation Plan in that the road design does not allow for east west traffic flow along 450 South. We submit that an alignment must be made whereby 450 South is connected from 200 East to the Frontage Road through the subject proposed subdivision allowing for an equitable east west distribution of traffic through the area consistent with the Farmington City Master Transportation Plan.

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FRANK GILES 68E 620S FGil. 5/29/13
ROSE MARK GILES 68E 620S Rose Mark Giles 5/29/13
DARON BERGSTROM 14 WEST 620 S 5/29/13
DARON BERGSTROM
Lisa Bergstrom 14 WEST 620 S 5/29/13
LISA BERGSTROM
Ryan Cadwallader 23 West 620 S 5/29/13
Jesse Cadwallader 23 W. 620 S 5/29/13
TAUNALEE CADWALLADER

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Rebecca Japion 801-451-2344

Dan Farley 801-451-7667

David Cannon 801-852-9548 (952 5803)

Joe Crandall 801-668-5669

Megan Hill 801-451-7546

David Knowles 801-451-0646

Diana Knowles 801-451-0646

Ron Poulson 801 718 8541

Audrey Poulson 801-451-8837

Sher Weight 801-451-2139

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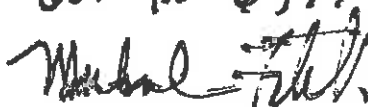
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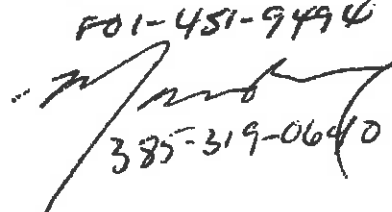
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 Maria Paskett
801-451-8420

Daniel Larson
801-910-6577

 Fitch
801-451-3862

TEO KALAKIS 
801-451-9494

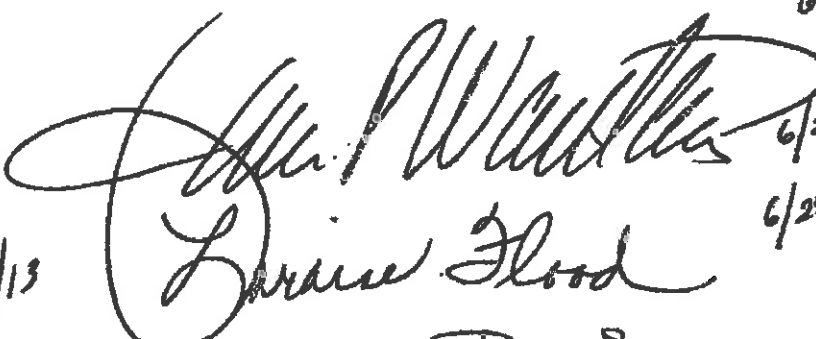
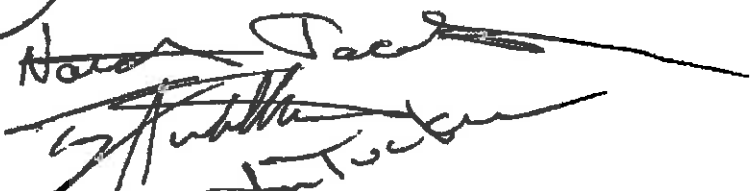

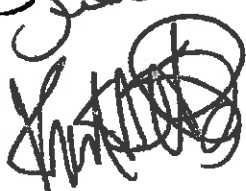
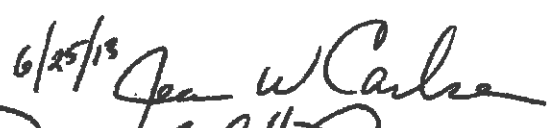
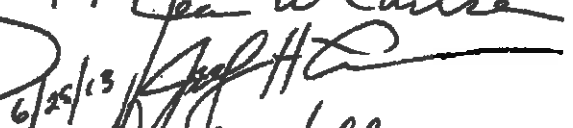
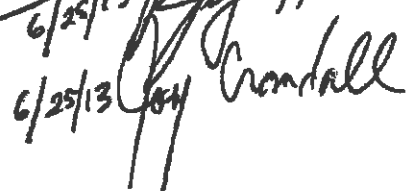
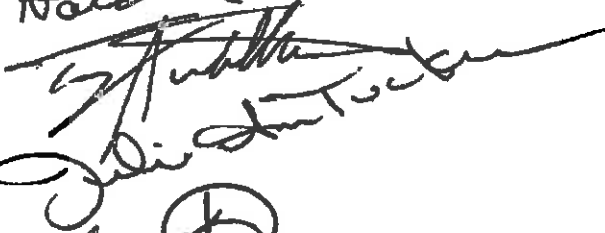
 Mark
385-319-0640

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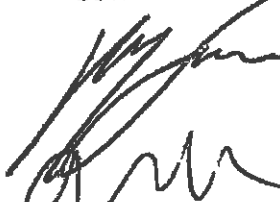


6/25/13  Laraine Flood
6/25/13  David Jacobson
6/25/13  Julie Anderson
6/25/13  [illegible]
6/25/13  Jan W. Carlson
6/25/13  Jeff H. [illegible]
6/25/13  [illegible]
6/25/13  [illegible]

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 Mike Hansen 6-24-13 5829.50W.
 Alie Hansen 6-24-13 " "
 Jan Peterson 79W 620S 41 6-25-13'

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Alan L. Tanner

ALAN L. TANNER

609. SOUTH 100 EAST

6-21-13

Stephanie J Spencer

Stephanie J Spencer

79 W 620 S Apt 1

6/24/2013

Brittany Thompson

BRITTANY THOMPSON

79 W. 620 S. #3

6/24/13

Landen Thompson

Landen Thompson

79 W. 620 S. #4

6/24/13

Landen Thompson

79 W 620 S #3

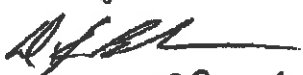
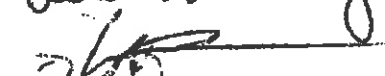

6/24/13

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Betty M. Carroll	Betty M. Carroll	618 S. 150 E.	June 29, 2013
Gary T. Carroll	GARY T. CARROLL	618 S. 150 E	29 June 2013
	D.E. Brewster	497 S 150 E	" " "
Karen Clark	Karen Clark	130 E. 650 S.	29 June 2013
Brent Clark	Brent Clark	130 E. 650 S.	29 JUN 2013
David R. Meadows	David R. Meadows	120 E. 650 S.	29 June 2013
Maria Zamora	MARIA Zamora	113 E 650 S	June 2013
Teresa Trusty	Teresa Trusty	626 S 100 E	June 29 2013
	Sam Stoneman	12 E 620 S	July 6, 2013
	Kelli Stoneman	12 E. 620 S	July 10, 2013

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<u>Sign</u>	<u>Print</u>	<u>Address</u>	<u>Date</u>
<i>Lynne Vernon</i>	Lynne Vernon	610 S. 200 E	6/27/13
<i>Kimberly Farley</i>	Farley	776 620 S Farmington UT 84405	6-27-13
<i>Lisa Hatt</i>	Lisa Hatt	670 S. 200 E	6/27/13
<i>Kim Taus</i>	Kim TAUSS DEP. PM RETIRED	188 E. 700 S.	6/27/13
<i>Beth Parker</i>	Beth Parker	188 E. 700 S.	6/27/13
<i>Sandra Herrera</i>	Sandra Herrera	171 E 200 S	6-27-13
<i>Janna Tolman</i>	Janna Tolman	56 E. 700 S.	6-27-13
<i>Edyger</i>		676 So 100 E	6-27-13
<i>540 S. 200 E</i>			

**Wes Homes Email and
Attachments
(August 22, 2013)**

Zimbra

dpetersen@farmington.utah.gov

Fw: Kestral Bay subdivision (#S-5-13)

From : Wes Holmes <wes.holmes@indiansummer.com> Thu, Aug 22, 2013 11:45 AM
Subject : Fw: Kestral Bay subdivision (#S-5-13) 3 attachments
To : hgordon@farmington.utah.gov
Cc : dpetersen@farmington.utah.gov

Hi Heidi,

Please include this with the materials for the 9/3/13 city council meeting. Thanks, Wes Holmes

From: Wes Holmes
Sent: Thursday, August 22, 2013 9:38 AM
To: Christy Alexander
Cc: dpetersen@farmington.utah.gov
Subject: Fw: Kestral Bay subdivision (#S-5-13)

Christy,

Here is my letter for consideration by the council for the 9/3/13 meeting. Would you be so kind as to reply and let me know that you received it? I am having email problems. Thanks, Wes

From: Wes Holmes
Sent: Wednesday, August 21, 2013 11:02 PM
To: mayor@farmington.utah.gov ; jbilton@centershift.com ; hjtalbot@comcast.net ; cindyroybal@gmail.com ; critz@foragegenetics.com ; youngjm@ldschurch.org
Subject: Re: Kestral Bay subdivision (#S-5-13)

Wes Holmes

39 West 620 South

Farmington, Utah

801-837-3239

From: Scott Balling
Sent: Monday, August 05, 2013 7:45 AM
To: Wes Holmes
Subject: Re: Kestrel Bay

Wes:

The days following the Planning Commission Meeting the City Engineer and Staff recommended that I present the same plan that was presented at the last planning commission meeting with no changes. I have attached a copy of the plan that is going to the city council.

Thanks
Scott Balling

On Thu, Aug 1, 2013 at 10:59 AM, Wes Holmes <wes.holmes@indiansummer.com> wrote:
Mr. Balling,

Do you have the schematic ready that you will present to the City Council? I was not sure what the planning commission ended up with. Wes Holmes

From: Scott Balling

Sent: Wednesday, July 31, 2013 1:37 PM

To: Wendy McKenna ; John Anderson, SPD ; Paul & Diana Halliday ; Wes Holmes ; JEFF TOLMAN ; Shannon Hicks

Subject: Kestrel Bay

Dear Neighbors:

I wanted you to be aware that our proposed project is on the City Council Agenda this next Tuesday, August 6th, at 7:10. There will be a public hearing at that time. If you or any of the neighbors would like to make comments with the City Council, please come to the meeting. If you have any further comments or questions concerning our plans please let me know. Currently we are most concerned about getting the FEMA Flood Plain Maps updated and this has demanded our main focus at this time. It is taking longer than anticipated but we believe we are making progress and anticipate at least another month before we receive FEMA approval which must happen before we proceed with additional city approvals. Your input is greatly appreciated and we would like any comments that you feel would add to the neighborhood.

Thanks
Scott Balling

 **Kestrel Schematic 7-05-13.pdf**

741 KB

 **Kestral Bay letter Subdivision Meeting.docx**

13 KB

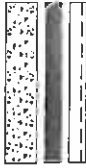
 **Petition to the Farmington City Planning Commission.docx**

11 KB

Scale: 1" = 30'

Schematic Plat
Not to be Recorded

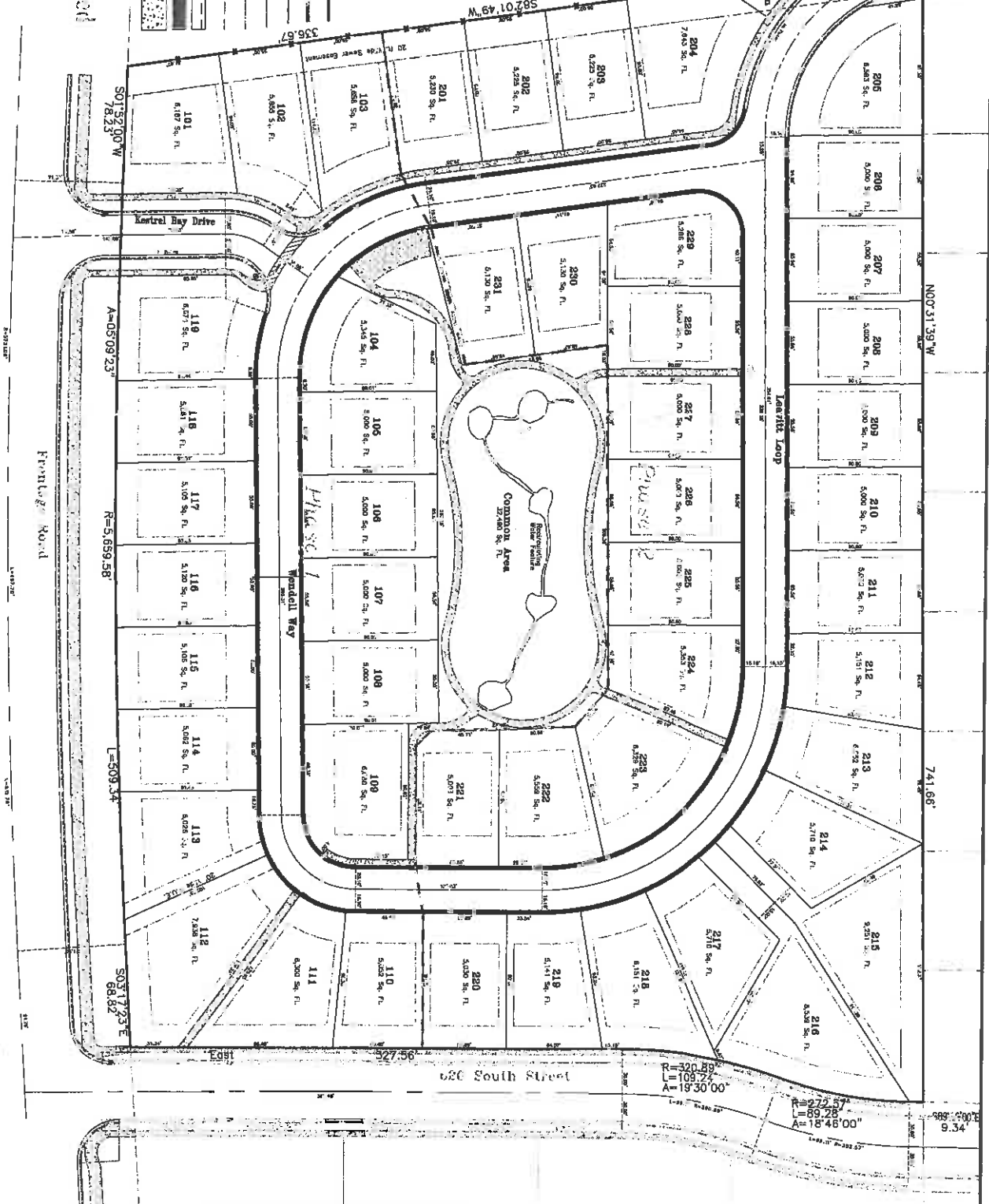
APR: Type F: Core and Outer
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APR: Type F: Core and Outer
Concrete Surface



FEMA Flood Plain
The site is located within the FEMA Flood Plain according to the current FEMA Flood Map and Flood Insurance Rate Map (FIRM) for the area. A FEMA Flood Insurance Rate Map (FIRM) for the area is available on the FEMA website. The site is located within the FEMA Flood Plain according to the current FEMA Flood Map and Flood Insurance Rate Map (FIRM) for the area. A FEMA Flood Insurance Rate Map (FIRM) for the area is available on the FEMA website. The site is located within the FEMA Flood Plain according to the current FEMA Flood Map and Flood Insurance Rate Map (FIRM) for the area. A FEMA Flood Insurance Rate Map (FIRM) for the area is available on the FEMA website.



APR: Type F: Core and Outer



C101
Sheet 3 of 8

Surveyor	B.T. Belling
Date Surveyed	4-24-11
Drafting	A.S. Belling
Checked By	A.S. Belling
Submittal Date	05-13
File Number	

Kestrel Bay Estates P.U.D.
Schematic Site Plan
For Scott Belling

Balling Engineering
Civil Engineering * Surveying * Planning
323 East Pages Lane
P.O. Box 805
Centerville, Utah 84014
Phone: (301) 285-7237
Fax: (801) 289-0418
Email: scott@ballingeng.com

August 21, 2013

Dear Farmington City Council, Mayor and Staff,

Re: Kestral Bay subdivision (#S-5-13).

My name is Wes Holmes and my family has lived on 620 South for 29 years. In 1984 when we moved in, 620 South was a dead end street. In 1988 Mayor Arbuckle asked me to join the planning commission, but I had to make a commitment to the Mayor not to oppose the Traffic Master Plan which called for 620 South to go through to 200 East. I kept that promise, and served on the planning commission for four years. Around 1998 the road went through connecting 620 South to 200 East, and on the day the traffic started flowing, City Manager Max Forbush and the Chief of Police (Jeff Jacobsen) met with me and Jan Hamilton, my neighbor across the street. At that time we were told that they would do everything they could to control the traffic and Max Forbush promised that when the Leavitt property was developed, that Farmington City would make certain that 450 South would go through to the Frontage Road. It is now time for the city to keep it's promise and enforce the Master Plan, which calls for 450 South to be connected from 200 East to the Frontage Road. My neighbors and I have circulated a petition which has been signed by approximately 60 residents along 620 South which is also referred to as Continental Drive. I have previously presented this petition to the planning commission and the city

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We support the schematic (I have attached a copy) that was presented at the last city council meeting and recommended by the Staff. This is a compromise over the straight shot that is indicated in the Farmington City Master Transportation Plan.

What if the residents of 620 South had refused to let 620 South go through to 200 East in 1998? Does anyone recall that prior to 1998 all the traffic flowing through area went down 450 South?

We have heard a lot about safety along 450 South. What about the safety of the children that live along 620 South that cross it every day when school is in session?

We have heard many unsupported opinions about 450 South being an illegal and substandard street. The fact of the matter is that 450 South is a legal

street and this is supported by the city traffic engineer, Tim Taylor, and the Farmington City Staff.

The Farmington City Master Transportation Plan, Farmington City's Planning Commission and Farmington City's Staff all recommend the connection of 450 South from 200 East to the Frontage Road.

What the issue here is all about is fairness. All we are asking for is for the traffic burden be shared consistent with the vision of the Farmington City Master Transportation Plan. I would encourage you to approve the schematic as approved by the Farmington City Master Transportation Plan, Farmington City's Planning Commission and Farmington City's Staff

Respectfully yours,

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Farmington, Utah

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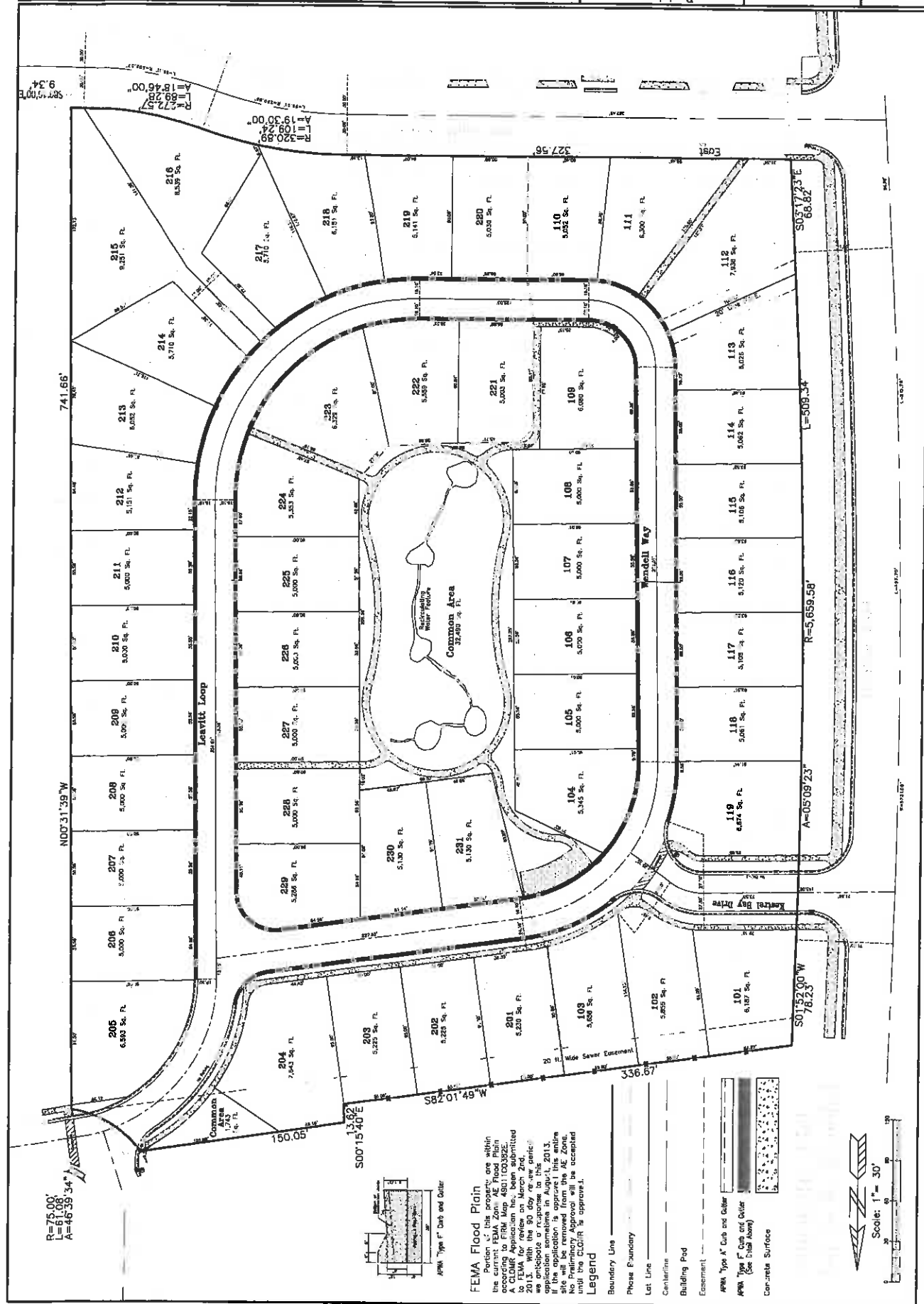
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[illegible]

Kestrel Bay Estates P.U.D.
Schematic Site Plan

Balling Engineering
Civil Engineering * Surveying * Planning
323 East Pages Lane
P.O. Box 805
Centerville, Utah 84014
Phone: (801) 295-7237
Fax: (801) 299-0419
Email: jbodding@balling.com





Balling Engineering

323 East Pages Lane
P.O. Box 805
Centerville, Utah 84014
Phone: (801) 295-7237
Fax: (801) 299-0419
Email: scott@ballinginc.com

Preliminary Comments by Scott Balling

Farmington City Council

September 3rd, 2013 Meeting

I thought it may be helpful to provide a few exhibits for clarification and discussions at the upcoming meeting. I have attached the following for your use.

Exhibit A - Schematic Plan that has the approval of the Planning Commission showing 450 South as a through street to the frontage road.

Exhibit B - Schematic Plan as first presented to the Planning Commission in May showing connections on the Frontage Road and 620 South and no through street for 450 South Street.

Exhibit C – Outline of the Kestrel Bay Concept Plan and Objectives

Exhibits D-1 through D-3 Concept Plans of the homes proposed for Kestrel Bay

We feel that we can develop either one of the plans as shown on Exhibits A and B into a very nice and attractive neighborhoods and would request your direction as to which would be most preferable.

Thank you for your time and considerations.

5000 Sq. Ft.	117
Phase	5,000 Sq. Ft.
	R-5,000

620 South Street

3275 S

210
5,141 Sq. Ft.

220
5,030 Sq. Ft.

110
5,092 Sq. Ft.

Plat Map of a Portion of the Northwest 1/4 of Section 36, Township 36N, Range 12W, showing Tracts 216, 217, and 218.

Tract 216: 2.21 Ac. Fl.

Tract 217: 5.71 Ac. Fl.

Tract 218: 6.17 Ac. Fl.

Boundaries and Measurements:

- North boundary of Tract 216: N 89° 15' 00" E, 100.00'.
- East boundary of Tract 216: S 89° 15' 00" E, 100.00'.
- South boundary of Tract 216: S 89° 15' 00" E, 100.00'.
- West boundary of Tract 216: S 89° 15' 00" E, 100.00'.
- North boundary of Tract 217: N 89° 15' 00" E, 100.00'.
- East boundary of Tract 217: S 89° 15' 00" E, 100.00'.
- South boundary of Tract 217: S 89° 15' 00" E, 100.00'.
- West boundary of Tract 217: S 89° 15' 00" E, 100.00'.
- North boundary of Tract 218: N 89° 15' 00" E, 100.00'.
- East boundary of Tract 218: S 89° 15' 00" E, 100.00'.
- South boundary of Tract 218: S 89° 15' 00" E, 100.00'.
- West boundary of Tract 218: S 89° 15' 00" E, 100.00'.

Other features include a north arrow in the upper right corner and various easement lines indicated by dashed and dotted lines.

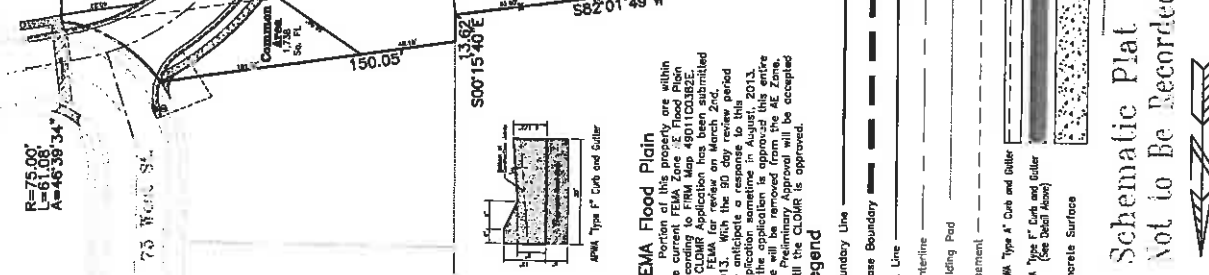


Exhibit B

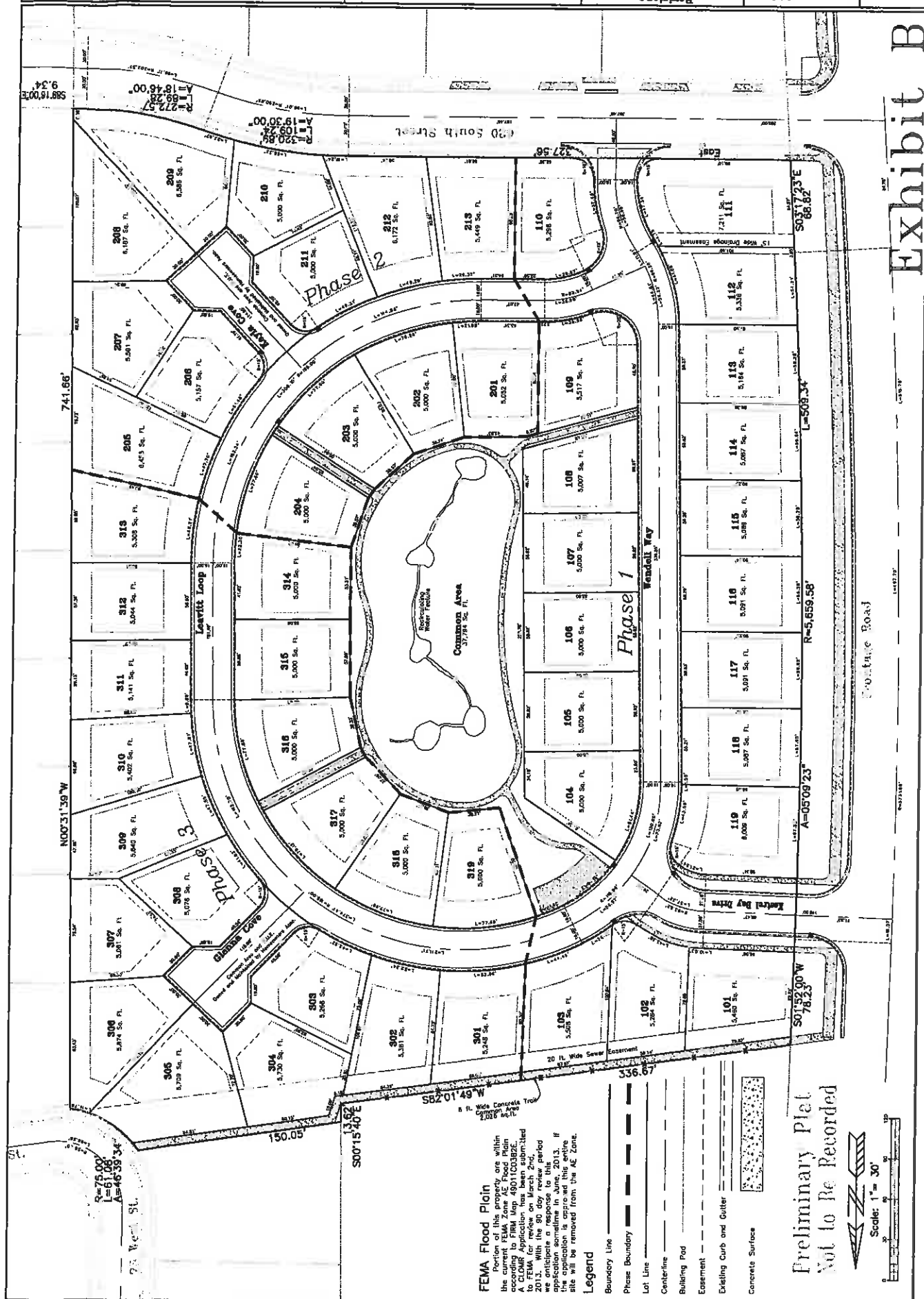
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Kestrel Bay Estates P.U.D.
Concept Site Plan
For South Building

Balling Engineering
Civil Engineering * Surveying * Planning

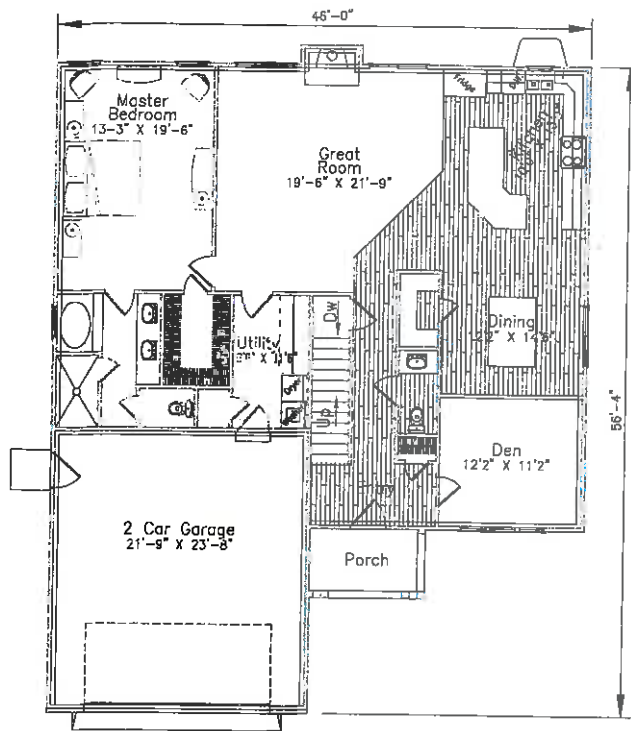
325 East Pegasus Lane
P.O. Box 805
Centerville, Utah 84014

Email: info@ballingeng.com
Fax: (801) 299-0418
Phone: (801) 295-7237

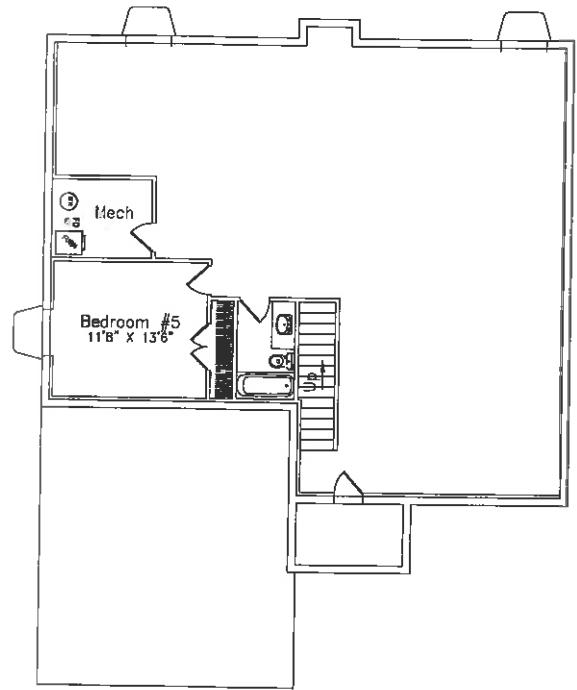


Kestrel Bay P.U.D. Concept and Objectives

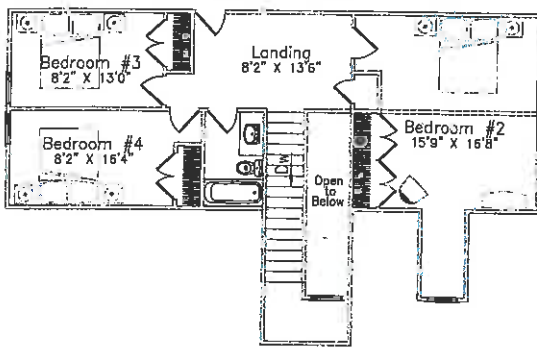
- All landscaping and snow removal within the development will be professionally maintained by contract with the Homeowner's Association.
- Accordingly the lots and setbacks will be smaller and very nice common open spaces will be provided with wider walkways easily accessible from every lot.
- Homes will be larger with focus on larger family gathering areas, hobby rooms and dens and fewer bedrooms, fewer steps and flatter walks and driveways.
- More custom features per each home will be provided as most of these experienced buyers will likely be more set in their ways and opinions.
- Full basements are desired and an associated land drain system will be necessary.
- For security purposes we desire this project to resemble as much as possible a gated community but without the entrance gates. We have tried to focus all entrance and exit into one point off the frontage road with a wider and more generously landscaped approach.
- No Lots will be exterior facing. No lots will have access from 620 South, 70 West Street or the Frontage Road. All landscaping and park strips on these roads will be maintained by the homeowners association.
- Quality Perimeter Fencing will be required. A sound wall will be installed the length of the frontage road. Remaining perimeter fencing will be discussed and agreed upon with adjacent neighbors.
- Residence will need to feel secure that they can lock up and leave their properties for extended periods of time.
- The Protective Covenants will include architectural reviews, Parking Restrictions (both on roads and driveways), and Recreational Vehicle Restrictions.
- There will be no restrictions on age or number of children. However as you can see from our marketing we are focusing on empty nesters and snow-birds.



Main Floor



Basement



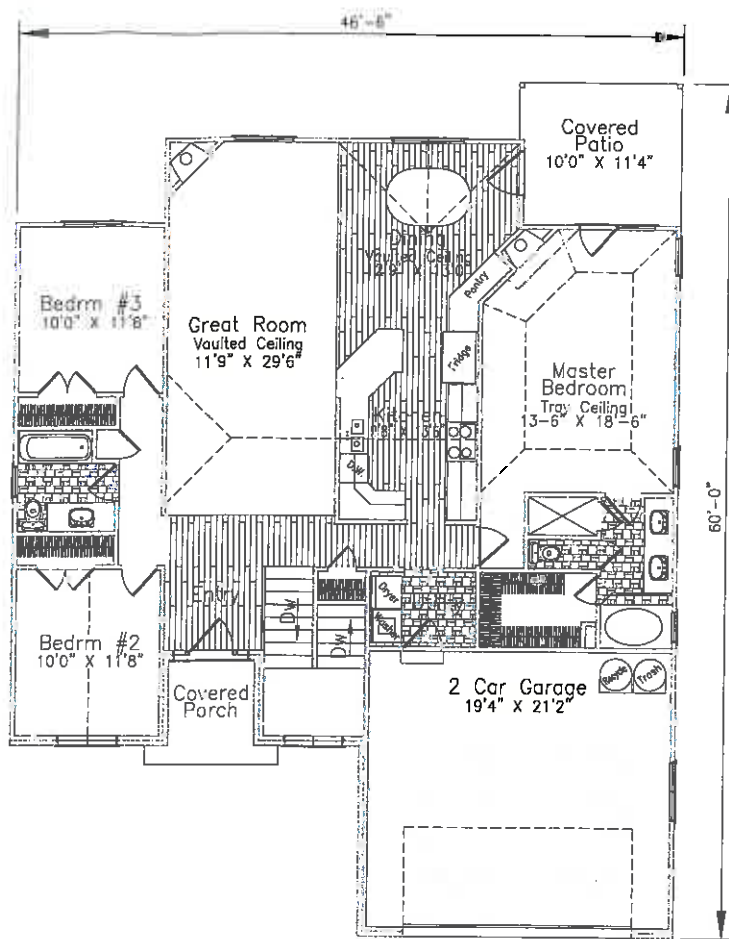
2nd Floor

Barbary Floor Plan

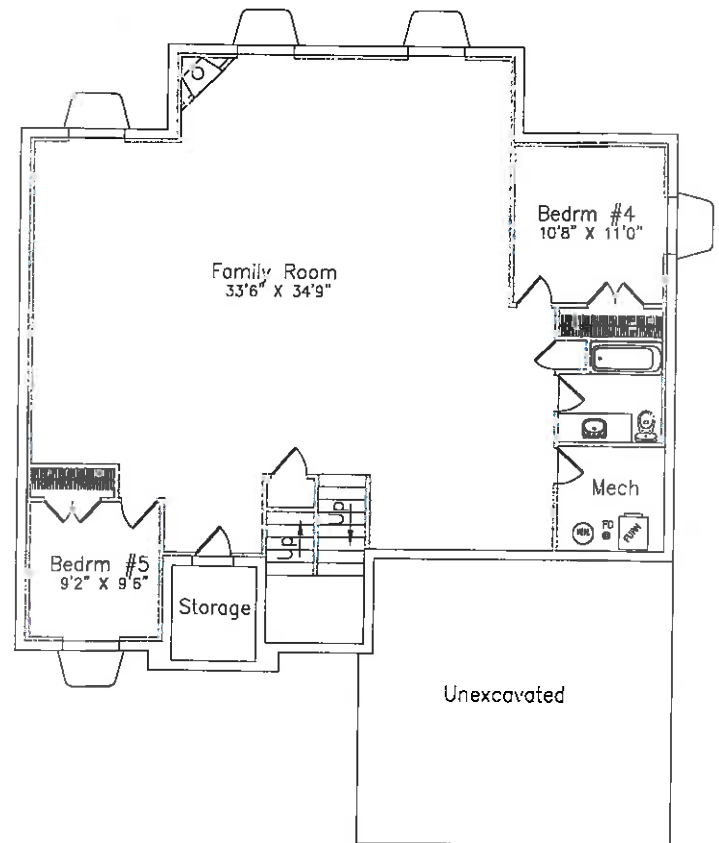
Second Floor Area	717 sq.ft.
Main Floor Area	1,614 sq.ft.
Basement Floor Area	1,664 sq.ft.

Balling Engineering





Main Floor



Basement

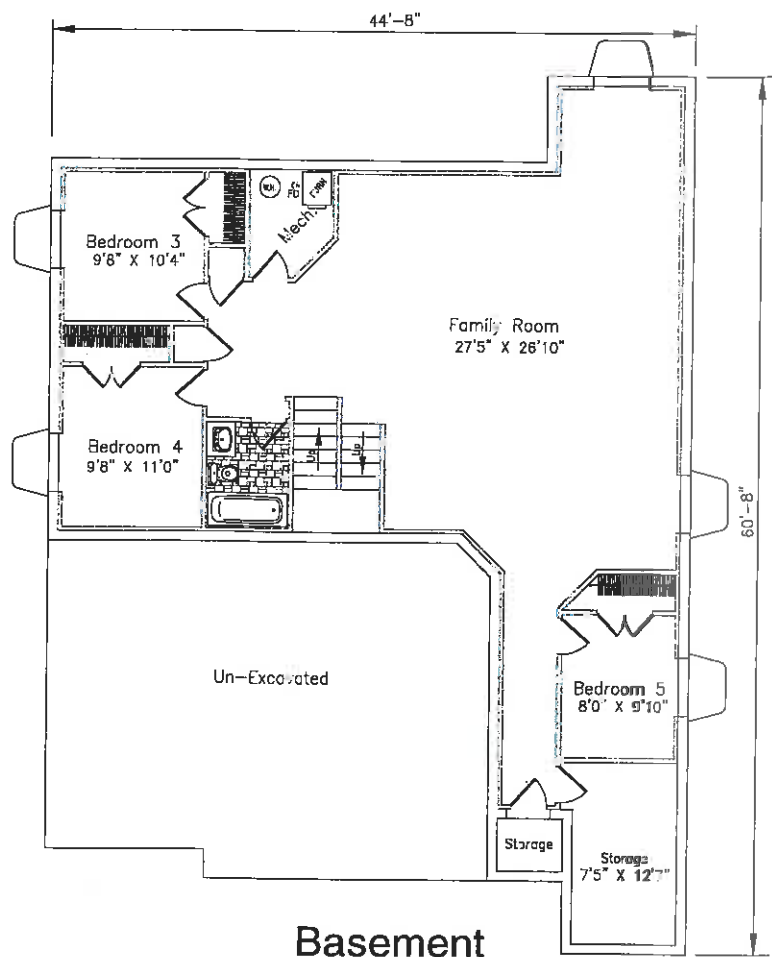
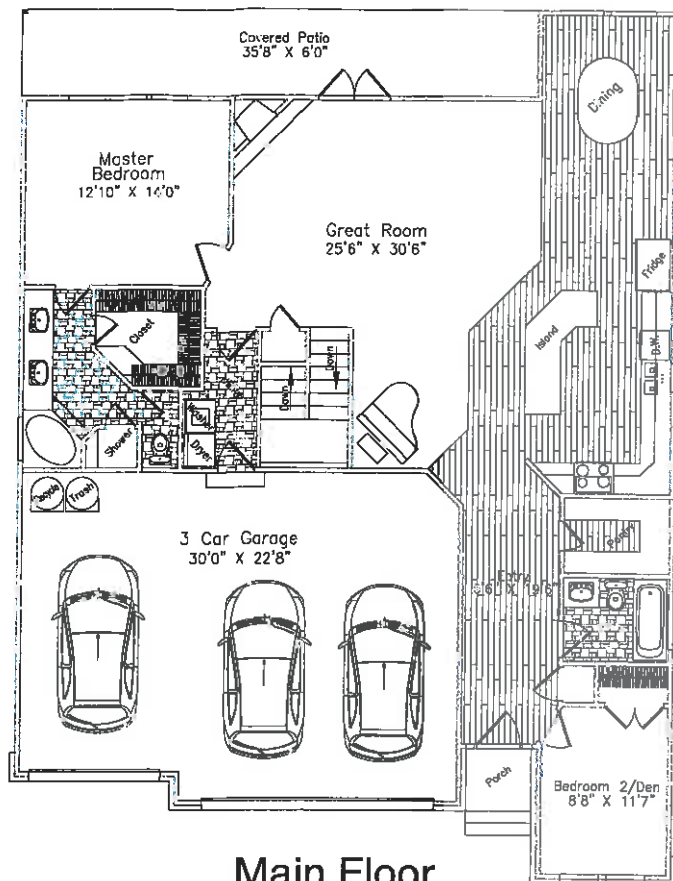


Cooper Floor Plan

Main Floor Area 1,590 sq.ft.
Basement Floor Area 1,510 sq.ft.

Balling
Engineering

Exhibit D-2



Falcon Floor Plan

Main Floor Area	1,543 sq.ft.
Basement Floor Area	1,513 sq.ft.

Exhibit D-3

Balling
Engineering

August, 26th 2013

Regarding Petition: Residence of 450 South Petition Letter to Farmington City

Members of the City Council, Mayor, and Farmington City,

The total count of the petition is 164 signatures, which were obtained from the residence of 450 South, and residence from connecting roads. The connecting roads consisted of 500 South, 10th West, 50th West, 75 West, 580 South, 40 East, and 100 East. Greater than 90% of the households contacted signed the petition.

Thank you,

Logan Peterson

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
Amanda Kessler	474 S 40 E	A Kessler
Juli Hadlock	38 W 580 S	Juli Hadlock
Arnon Hadlock	38 W 580 S.	Arnon Hadlock
Toby Johnson	564 S. 50 W.	Toby Johnson
APRIL JOHNSON	504 S. 50 W.	April Johnson
Garth Ball	545 So 50 W	Garth Ball
Karen Ball	545 So. 50 W	Karen Ball
Jared Foster	520 So 50 W.	Jared Foster
Miranda Foster	520 S 50 W	Miranda Foster
Jackie Kirk	507 S. 50 W. Farm.	Jackie Kirk
Natalie Kirk	507 South 50 West " "	Natalie Kirk
LeAnne Julander	487 S. 50 W.	LeAnne Julander
Cindi Julander	487 S. 50 W	Cindi Julander
Douglas Julander	487 S. 50 W	Douglas Julander
MARK GOLD	435 S 75 W	Mark Gold
Holly Gold	435 So. 75 W	Holly Gold
Cynthia DeCoursey	428 S. 75 W.	Cynthia DeCoursey
Dave DeCoursey	428 S 75 W	Dave DeCoursey
Glacie Miller	418 S. 75 W.	Glacie Miller
Gerald Miller	418 S 75 W	Gerald Miller
Kristine Johnson	412 S. 75 W.	Kristine Johnson
Dee W. Johnson	412 S. 75 W	Dee W. Johnson
Bryan Jewett	413 S. 75 W.	Bryan Jewett
Kristi Jewett	413 S 75 W	Kristi Jewett
Sydney Maudsley	403 S. 75 W.	Sydney Maudsley
MICHAEL MAUDSLEY	403 So. 75 W	Michael Maudsley
Robert G. Gardner	398 So 75 W	Robert G. Gardner

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
Valerie Johnson	419 S. 10 W.	Valerie Johnson
Cheri Matson	410 S. 10 W.	Cheri Matson
Catie Frampton	402 S. 10 W.	C Frampton
Carolyn Maxwell	397 South 10 W.	Carolyn Maxwell
Lee Maxwell	397 So. 10 W.	Lee Maxwell
Kambria Johnson	419 S. 10 W.	K Johnson
Ed Johnson	419 S 10 W	Ed Johnson
Rebecca Bornholdt	498 S. 40 E.	Rebecca Bornholdt
Johnny Exon	52 E. 500 S.	Johnny Exon
Kelly Exon	52 E. 500 So.	Kelly Exon
Quinn Orr	102 E 500 S	Quinn Orr
Susan Orr	"	Susan Orr
David Kessler	474 S 40 E	David Kessler
Debbie Bernhise	436 S. 10 W.	Debbie Bernhise
Dave Bernhise	436 S. 10 W	Dave Bernhise
Jane Frampton	402 S. 10 W.	Jane Frampton
Jouen Matson	410 S. 10 W.	Jouen Matson
Sylvia Stevenson	504 S 10 W.	Sylvia Stevenson
Carlin Stevenson	504 S 10 W.	Carlin Stevenson
Randy Stevenson	504 S. 10 W.	Randy Stevenson
Randy Stevenson	504 S 10 W.	Randy Stevenson
Susan Nelson	562 S 10 W	Susan Nelson
Scott Christley	583 S 10 W	Scott Christley
Heather Christley	583 S 10 W	Heather Christley
Berkeley Ward	23 W 580 S	Berkeley Ward
Annie Ward	23 W 580 S	Annie Ward
Karl Ward	23 W. 580 S	Karl Ward

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
Erika Stowell	488S 10W	Erika Stowell
Jared R. Stowell	488S 10W	Jared R. Stowell
BRIAN L. LEWIS	74 E. 450 S.	Brian Lewis
Wendy McKenna	62 E. 450 So.	Wendy McKenna
Richard McKenna	62 E. 450 So.	Richard McKenna
Peggy Kovacs	485 S. 40 E.	Peggy Kovacs
William M. J.	4185 S. 40 E.	William M. J.
Kelliann Carlson	73 E. 500 S.	Kelliann Carlson
Julene Carlson	73 E. 500 S.	Julene Carlson
Brian Carlson	73 E. 500 So.	Brian Carlson
Addie L. Smith	87 E. 500 So.	Addie L. Smith
Paul Smith	87 E. 500 So.	Paul Smith
Shelley W. Tew	103 E. 500 S.	Shelley W. Tew
Craig R. Tew	103 E. 500 S.	Craig R. Tew
Patricia Scholte	121 E. 500 S.	Pat Scholte
Alex McLachlan	509 S. 150 E.	Alex McLachlan
Hadyn Call	138 E. 500 S.	Hadyn Call
Kristin Call	138 E. 500 S.	Kristin Call
Valori Tref	68 E. 500 So.	Valori Tref
Tim TREF	68 E. 500 S.	Tim Tref
Ron Salisbury	38 E. 500 S.	Ron Salisbury
Julie Salisbury	38 E. 500 So.	Julie Salisbury
Trisha Salisbury	38 E. 500 S.	Trisha Salisbury
David Bornholdt	498 S. 40 E.	David Bornholdt
Clark Thomas	488 S. 40 E.	Clark Thomas
Randall B. Stewart	471 So. 40 E.	Randall B. Stewart
Julie Stewart	471 So. 40 E.	Julie Stewart

24

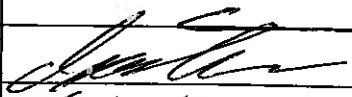
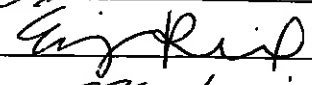

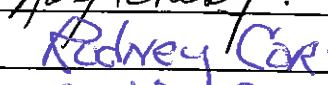


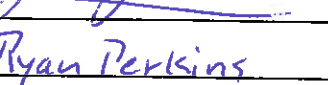
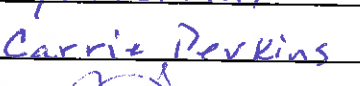
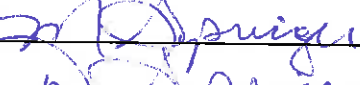

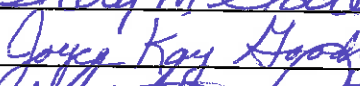

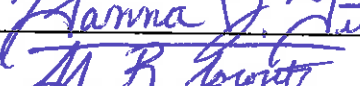
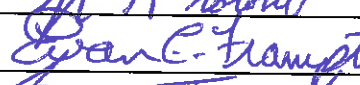
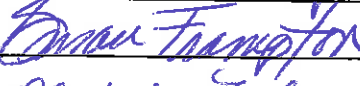


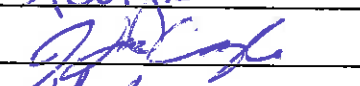
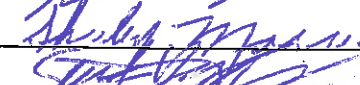
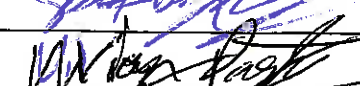
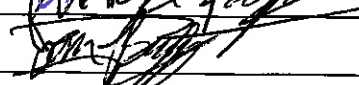



450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
Carolyn Toronto	47 E. 450 S	Carolyn P Toronto
JOHN TORONTO	" " "	John Toronto
John Anderson	43442 S. 10 W	John C Anderson
Cindy Anderson	442 S. 10 W.	Cindy R Anderson
BRYCE MAXWELL	407 S. 10 W.	Bryce Maxwell
Karmen Maxwell	407 S 10 W	Karmen Maxwell
Denise Ellis	27 E. 450 So.	Denise Ellis
Dave Ellis	27 E. 450 So.	Dave Ellis
Lepten Bernikel	436 S. 10 West	Lepten Bernikel
JEFF WELLS	445 S 75 W	Jeff Wells
Rachel Wells	445 S 75 W	Rachel Wells
Diana Halliday	448 S 75 W	Diana Halliday
Paul Halliday	448 S 75 W	Paul R Halliday
Beryl Tolman	433 S 200 W	Beryl Tolman
Lance Drollinger	450 S. 100 E	Lance Drollinger
Lisa Drollinger	450 S. 100 E.	Lisa Drollinger
Kelly Brown	450 S. 161 E.	Kelly R Brown
Jenny Brown	450 S. 161 E.	Jenny Brown
Steve McGill	446 S. 200 E.	Steve McGill
Kathleen McGill	446 S. 200 E.	Kathleen McGill
Tredy Tattenfick	180 E 450 S.	Tredy Tattenfick
Janone Oremshaw	4 E 450 So	Janone Oremshaw
Bryan Standiford	472 S 50 W	Bryan Standiford
Liz Standiford	472 S 50 W.	Liz Standiford
Michael Cox	497 S 50 W.	Michael Cox
Jennifer Tolman	433 S. 200 W.	Jennifer Tolman
Jeff Tolman	433 S. 200 W	Jeff Tolman

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
PAUL PANTLE	436 S. 100 E. FARMINGTON	Paul Pantle
Peggy Pantle	436 S 100 E Farm	Peggy Pantle
Cherie Neff	420 S 100 E Farm	Cherie Neff
BRANDON Neff	420 S 100 E Farm	Brandon Neff
Cindy Cooper	420 S. 100 E Farm.	Cindy Cooper
STEVE COOPER	420 S. 100 E Farm	Steve Cooper
Mark Summerhays	427 S. 100 E Farmington	Mark Summerhays
Summerhays	427 S 100 E Farm	Summerhays
Chad Cooper	427 S 100 E	Chad Cooper
Dan & Willock	420 S 100 E	Dan & Willock
Susan Baxter Smith	413 S. 100 E. Farmington	Susan Baxter Smith
Jessica Smith	413 S. 100 E. Farmington	Jessica Smith
Ginny Robinson	569 S 10 W Farmington	Ginny Robinson
Melinda Robinson	569 S. 10 W. Farmington	Melinda Robinson
Celeste Cooper	427 S 100 E Farmington	Celeste Cooper
Barbara Squires	350 S. 100 E Farmington	Barbara Squire
Kara Noyes	481 S 10 W Farmington	Kara Noyes
Clay Noyes	481 S 10 W Farmington	Clay Noyes
Khley Mc Cleary	84 E. 500 S. Farming.	Khley Mc Cleary
Gavin McCleary	84 E 500 S. Farming	Gavin McCleary
William E. Erickson	546 S. 10 W.	William E. Erickson
BARBARE Erickson	546 S 10 West	Barbara Erickson
Nik PARKER	537 S. 10 W.	Nik Parker
Ashley Parker	537 S. 10 W.	Ashley Parker

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

NAME (Please Print)	ADDRESS (Please Print)	SIGNATURE
D. Logan Peterson	68 E 450 S.	
Emily Reid	465 S. 50 W.	
Jon Reid	465 S. 50 W.	
Virginia A. Peterson	68 E 450 S	
Redney Core	94 E 450 S	
Anita Core	" "	
Jess Johnson	450 S 185 E	
Ryan Perkins	147 E. 450 S	
Carrie Perkins	147 E. 450 S.	
Mary Springer	118 E. 450 S	
Dan Springer	" "	
GARY M GOODRICH	85 E-450 S	
Joyce Kay Goodrich	85 E 450 S	
MATT TITTLE	65 E. 450 S.	
Tanna Tittle	" "	
TYLER TORONTO	47 EAST 450 SOUTH	
Evan C. Frampton	443 S 10 West	
Susan Frampton	" " " "	
Mary Eldredge	442 S 75 W	
Edna Eldredge	442 S 75 W	
Paula Coyle	440 S 10 W	
Kason Coyle	440 S 10 W.	
SHIRLEY MARKIS	4 E P. 450 S	
Steve B. Slet	40 S 40 E	
Vivian Page	482 S 40 E	
Sam Boyer	402 S 40 E	

450 South Petition Not to Extend Road to I-15 Frontage Road with Compromise Proposal

[illegible]

2

CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

S U B J E C T: Minute Motion Approving Summary Action List

1. Approval of Minutes from August 20, 2013
2. Amended Employment Agreement for City Manager
3. Final Plat for Miller Meadows Phase 5
4. Final Plat for Oakwood Estates Phase 6
5. Street Lighting Replacement Contract with Seimens

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.

FARMINGTON CITY COUNCIL MEETINGTuesday, August 20, 2013

CLOSED SESSION 5:00 pm***Motion:***

At 6:15 p.m., **John Bilton** made a motion to go into a work session. **Cory Ritz** seconded the motion which was unanimously approved.

WORK SESSION

Present: Mayor Scott Harbertson, Council Members John Bilton, Cory Ritz, Cindy Roybal and Jim Talbot, City Manager Dave Millheim, City Development Director David Petersen, Deputy City Recorder DeAnn Carlile and Recording Secretary Lara Johnson. Council member Jim Young was excused for the work session.

Form-Based Code Presentation

Eric Anderson, from the City's Planning Commission, gave a presentation regarding some of the problems off-street parking may create and how form based codes help to solve those problems.

Historic Landmark Designation – Robinson Buildings and Homes

The Council discussed the letter received from Lagoon regarding their home that was nominated for the City's Historic Landmarks Register located at 104 West 100 North. The letter stated Lagoon does not want their home to be included on the City's Register.

Council members were unaware, until this letter was received, that any property owners were not comfortable being added to the Register. They felt it would be appropriate to table this item until some kind of written approval was received by the Historic Preservation Committee from each property owner of the homes and buildings being nominated for the Register.

REGULAR SESSION

Present: Mayor Scott Harbertson, Council Members John Bilton, Cory Ritz, Cindy Roybal, Jim Talbot and Jim Young, City Manager Dave Millheim, City Development Director David Petersen, Deputy City Recorder DeAnn Carlile and Recording Secretary Lara Johnson

CALL TO ORDER:**Roll Call (Opening Comments/Invocation/Pledge of Allegiance)**

The invocation was offered by **Cindy Roybal** and the Pledge of Allegiance was led by a scout from the community, **Hayden Wilcox**.

PUBLIC HEARINGS:

Historic Landmark Designation – Robinson Buildings and Homes

David Petersen stated the Historic Preservation Commission are nominating 4 homes and 1 business to the City's Historic Landmarks Register. Each home has a tie to Joseph Lee Robinson or members of his family.

Annette Tidwell, Chair of the Farmington City Historic Preservation Commission, nominated the following homes for the City's Historic Landmarks Register: 127 North Main Street, 104 West 100 North, 94 North 100 West, 67 West 100 North, 79 North Main Street. Each home was built by Joseph Lee Robinson or one of his descendants. Joseph Lee Robinson was one of the first settlers of Farmington and was the first L.D.S. bishop for the area. She provided a brief history of each home. **Annette Tidwell** stated each property owners of the homes were notified of the nomination and to her knowledge, there were no known objections.

Public Hearing opened at 7:21 p.m.

Andre Meekham, representative of the property owners of location 104 West 100 North, which is being nominated for the Register, formally objected to the nomination of this property. The property owners feels this type of status brings restrictions, conditions and burdens without additional benefits. He also said based on Chapter 39 of the City's code, he said it is debatable whether this home qualifies for the Register based on changes that were made to the home prior to and since the current ownership. They would like this property withdrawn from the nomination, but are still supportive of any property owners that would like the designation.

Public Hearing closed at 7:25 p.m.

Mayor Harbertson asked **Annette Tidwell** if there had been anything signed by the property owners stating they would like this designation. **Annette Tidwell** stated that letters went out to all property owners requesting them to contact the Historic Preservation Commission if they did not want to be included in the nomination. She did not hear back from any property owners.

John Bilton applauded the Commission for being very attentive in walking through the full process, but he would like to be sure the home owners to have a clear understanding of what they are signing up for with this designation. In regards to the letter received by Dave Freed, from the Lagoon Investment Company, **John Bilton** felt some wording included was unnecessary; however, the letter will be entered into the record for this meeting.

Cory Ritz counseled the Commission to be sensitive to personal property rights. He would also like an affidavit, a letter or some other written form from each property owner requesting this designation.

Motion:

Cory Ritz made a motion that the City Council table this item to future date to allow for the creation of letters from property owners requesting this designation. The motion was seconded by **Jim Talbot** which was unanimously approved.

PRESENTATION OF PETITIONS AND REQUESTS:

Festival Days Charity Motorcycle Ride Check Presentation to Huntsman Cancer Foundation

Mayor Harbertson, along with **Neil Miller**, **Stefanie Gallagher** and **Sid Young** of the Festival Days Charity Motorcycle Ride, presented a check for \$1410 to **Sally Montgomery**, representative of the Huntsman Cancer Foundation.

Sally Montgomery thanked everyone for the donation as it all goes to funding cancer research. **Mayor Harbertson** thanked **Chris Hansen**. **Mr. Hansen** designated the funds to be donated to the Huntsman Cancer Foundation in honor of his late wife.

Microphones for Council Chambers

Mayor Harbertson said the Council discussed new microphones as the Council has to lean far over to reach the current ones. They felt a headset or a microphone that could be clipped on would be good alternatives. The proposals, as shown in the staff report, were significantly more expensive than anticipated. He does not feel comfortable spending that much on microphones.

Jim Talbot suggested asking the public to raise their hand if at any time they cannot hear the Council. He said he would feel embarrassed to spend that much money on microphones.

Mayor Harbertson asked the Council to please remember to lean forward and talk clearly into the microphone; he asked the public to please raise their hand if at any time they cannot hear the counsel adequately.

Motion:

None.

SUMMARY ACTION

1. Approval of Minutes from August 6, 2013
2. Ambulance Write-offs for FY2013
3. Resolution amending the Consolidated Fee Schedule relating to Recycling Collection Fees
4. Canvass for Primary Election Results
5. Proposed Jeppson Annexation (#A-1-13)
6. Ratification of Approvals of Storm Water Bond Logs

David Petersen clarified that the Jeppson's would like to do a subdivision of approximately 12-14 lots similar to the developments around them. Last time they submitted

an application was in 2006-2007; however, the applicant was not ready to move forward at that time. They are now ready to do so.

Motion:

John Bilton made a motion to approve the Summary Action List as noted in the items 1-6. **Cory Ritz** seconded the motion which was unanimously approved.

CLOSED SESSION

Motion:

At 7:42 p.m., **John Bilton** made a motion to go into a closed meeting for the purpose of potential litigation. **Cory Ritz** seconded the motion which was unanimously approved.

Sworn Statement

I, **Scott C. Harbertson**, Mayor of Farmington City, do hereby affirm that the items discussed in the closed meeting were as stated in the motion to go into closed session and that no other business was conducted while the Council was so convened in a closed meeting.

Scott C. Harbertson, Mayor

Motion:

At 8:33 p.m., a motion to reconvene into an open meeting was made by **John Bilton**. The motion was seconded by **Jim Talbot** which was unanimously approved.

City Direction on West Davis Corridor EIS

Mayor Harbertson said the Council needs to make a decision on how we get the City's comments to Utah Department of Transportation (UDOT) before September 6, 2013, which is the deadline for the EIS public comment period.

Motion:

Cory Ritz made a motion that the City Council direct staff, legal counsel and consultants to draft a letter to the Utah Department of Transportation, with a copy sent to the Federal Highway Administration, in response to the EIS public comment period, for entering into the record on behalf of Farmington City in regards to the West Davis Corridor, which will include Farmington's position, philosophy and desires in accordance with points raised in the outline memorandum brought by the City's consultant Jeffrey Appel and to use the points made and analysis provided in the outline presented tonight in support of an official Farmington position, which will then be provided to the Council and public for submittal. **Jim Talbot** seconded the motion which was unanimously approved.

GOVERNING BODY REPORTS:

City Manager – Dave Millheim

- Building Activity Reports for June and July. See the staff report.
- Recreation Fees for Coaches – Review Memo. He stated the City is currently doing a lot, as shown in the memo and Neil Miller, the Parks and Recreation Director, does not feel like the City needs to do anything additional in this area.
- Solar Panels for Pool. He stated there is no simple solution for solar panels as the pool is so large.
- URMMA Score. Farmington received the highest score of any of the participating cities.
- Preconstruction Meeting on Remaining 3 Miles of D&RGW Trail. It will be a 36 day construction cycle; the hardest part will be keeping people off the trail. There will be a story in the City newsletter regarding it. It should be completed by mid-October.
- Benches at Bus Stops. If the City works with UTA to get benches at bus stops, it will take years and will cost significantly more than anticipated, even with splitting it 50/50 with UTA. If the City builds their own concrete pads, each will cost \$985 if all are completed at the same time. There are approximately 25 stops of the 70 bus stops in Farmington where a concrete pad could easily be placed and which are heavily used stops. Once the pads are in place, UTA will give the City benches; however, it is up to the Council on the quality of benches they want as the UTA ones are very basic. The Council would like more information from UTA to determine the heavy trafficked bus stops to ensure benches would be placed at the most appropriate spots. They would also like to find out if UTA has any other benches they offer.
- The Wells. The City has two wells, Well #1 and the Woodland Well. Well #1's circuit board went out causing the City to run the Community Center Well at a much higher capacity. The City did see an increase in calls from citizens complaining about water quality as the Community Center Well was running at 85% for 4 days. Without the Community Center Well, however, the circumstance could have been much worse. The Council asked that more information be provided to them in circumstances like this so they can adequately respond to citizen's complaints. **Dave Millheim** would also like the Council to direct citizens to the City website to complete the water quality questionnaire so the City environmental consultants can better determine water quality problems as they occur.

Mayor Scott Harbertson

- Farmington Market. He said there was a great article in the paper about it. It was a great event, but he would like to see it better attended. He wants the City to support it, but he would like to see more advertisements. **Dave Millheim** clarified that CenterCal is providing all advertisement and insurance for the event. The Mayor would like the Council to pass the word to other community members.
- Recent Farmington Fire. He recognized the Fire Crews, the whole district area, the forest service and so many more for their help with the recent fire. The City and the Council appreciates a job well done.
- Noise Complaint from Woodland Park. He received a call from Bob Arbuckle, former Mayor of Farmington. He was upset about the noise coming from the band playing at Woodland Park. Mr. Arbuckle called dispatch and was upset with their short response. **Mayor Harbertson** would like staff to follow-up with the ending times of events and the current noise ordinance as the park is so close to residents.

- David Stringfellow. He expressed his appreciation for his willingness to serve the community.

City Council

Cory Ritz:

- He expressed concerns that panhandlers could accompany the growth here in Farmington. He would like staff and the City attorneys to research what we can do as a City to keep residents unbothered.

John Bilton:

- He did not have anything to report at this time.

Jim Talbot:

- He followed up on location 1426 Walker Lane. The resident is still in violation of the code; he would like the City to continue action to the next level. **Mayor Harbertson** would also like 1470 South 200 East to have further action taken as many notices have already been sent.
- He would like the City to review the fireworks ordinance signage next spring and summer as there are some neighborhoods that do not need the restrictions. He felt it was confusing.
- He would like the rock from the Robinson home that Lagoon tore down. The Council was not sure if it was still available. He will go and look.
- He talked about what a great asset Station Park is to Farmington. It is bringing a lot of attention and traction to our City.
- He appreciated how quickly the Farmington fire was put out and recognized all those that worked so hard to make that happen.
- He visited Craig Holmes, who currently has a lawsuit with the City. Mr. Holmes provided a letter to him that he never sent the City in response to the denial of a U-Haul business. **Jim Talbot** said he will share this letter with the Council. He wondered if the City could revisit that issue at all with the current lawsuit in place. **Dave Millheim** said yes, but he also does not know where the City is with the litigation. He will get a report of where the City is in the litigation. **Jim Talbot** asked the Council to read the letter and if they feel it appropriate, they can possibly revisit the issue at a later date.

Cindy Roybal:

- She also expressed concerned about how the circumstance was handled with Craig Holmes. She feels the City could do more to reach out to its citizens and listen to what they are saying to resolve problems.
- **Dave Millheim** also discussed that he and **Cindy Roybal** had a conference call with a property owner with regards to a property acquisition and possible annexation. It will be discussed in the next closed meeting.

Jim Young arrived at 9:15 pm

Jim Young:

- The Mayor has served as President of Utah's League of Cities and Towns and he has been attending the policy committee meetings. He would like Farmington to continue to have representation on that board. He would like to be nominated to continue to serve on that board.

Motion:

Cindy Roybal made a motion to nominate and support **Jim Young** to file an application to serve on the board of Utah's League of Cities and Towns. **Jim Talbot** seconded the motion which was unanimously approved.

ADJOURNMENT

Motion:

Jim Young made a motion to adjourn the meeting. The motion was seconded by **Cindy Roybal** which was unanimously approved; the meeting was adjourned at 9:26 p.m.

Holly Gadd, City Recorder
Farmington City Corporation



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BULTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Dave Millheim, City Manager

Date: August 1, 2013

SUBJECT: AMENDED EMPLOYMENT AGREEMENT FOR CITY MANAGER

RECOMMENDATION

By minute motion, authorize the Mayor to execute the attached amended employment agreement for the City Manager dated August 20, 2013 which adds five days of annual vacation leave in recognition of performance and as compensation for extra hours worked in the discharge of his duties.

BACKGROUND

The City wishes to modify the employment agreement of the City Manager in recognition of performance and the extra hours needed to perform his job. The City Manager is available 24/7 and responds to Council and resident needs well beyond the normal work day. He also serves as the Emergency Operations manager for the City which often requires after business hours response. The Council also wants to insure the City Manager will not become burned out or that his family obligations will suffer. For that reason this contract amendment also requires that he at least once annually take at least five (5) days of continuous vacation to recharge his batteries.

Respectfully Submitted (with gratitude)

Dave Millheim
City Manager

CITY MANAGER EMPLOYMENT AGREEMENT
(Amended August 20, 2013)

THIS EMPLOYMENT AGREEMENT is made and entered into as of the 20th day of August, 2013, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **DAVE MILLHEIM**, an individual, hereinafter referred to as "Millheim." It rescinds and replaces the agreement approved in November of 2011.

RECITALS:

WHEREAS, the City desires to modify the terms of employment for Millheim who is serving as City Manager of Farmington City in accordance with the provisions of Title 2, Chapter 3 of the Farmington City Code; and

WHEREAS, the City desires to continue to provide certain benefits and to establish certain conditions of employment as provided herein; and

WHEREAS, Millheim and the City wish to modify the earlier agreement to add five (5) days additional vacation accrual annually in recognition of performance and as compensation of extra work hours required to satisfactorily perform the duties of City Manager.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide for the employment of Millheim as City Manager of the City in accordance with the provisions of Title 2, Chapter 3 of the Farmington City Code.

2. **Duties.** The City agrees to employ Millheim to perform and carry out the duties and functions of City Manager for the City as specified in the City's job description for such position and the City's ordinances, rules and regulations, and to perform such other legally permissible and proper duties and functions as the City shall from time to time assign. Millheim shall not have any legislative, judicial or policymaking authority. Millheim agrees that to the best of his ability and experience he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement. Millheim shall be subject to the general direction of the governing body of the City. For purposes of this Agreement, governing body shall consist of the Mayor and members of the City Council as more particularly described in Utah Code Ann. § 10-3b-101, et. seq., as amended.

3. **Term of Employment.** It is expressly understood and agreed that Millheim serves as an at-will employee of the City and that subject to the provisions set forth herein, he may be terminated at any time by the governing body with or without cause as more particularly provided in Section 11 of this Agreement. It is further acknowledged and understood that the

position of City Manager is a full-time position and that Millheim is an exempt employee under applicable provisions of the Fair Labor Standards Act.

4. Compensation.

a. The City shall pay Millheim for his services an annual base salary of One Hundred and Seven Thousand One Hundred and Forty Six Dollars (\$107,146). Compensation increases and/or bonuses may be provided by the City at the discretion of the City Council and will not require contract amendment but must be approved in a duly noticed Council meeting. Compensation shall be payable in regular payroll installments at the same time as other employees of the City are paid. The City shall pay the required employer's contributions on Millheim's salary where required for Social Security and Medicare. Millheim shall be responsible to pay the employee's portion of any Social Security and Medicare taxes.

b. The City shall contribute equal to the percentage that is paid to the State Retirement System for regular City employees, plus 3% of Millheim's annual salary to a qualified 401(a) defined contribution plan in accordance with the provisions and subject to the conditions of such plan as adopted by the City to the extent Millheim is qualified to participate in such plan.

c. Millheim shall be entitled to all benefits and qualified leave provided for full-time City employees in accordance with the City Personnel Policies and Procedures, including, but not limited to, retirement, group health insurance coverage, vacation, sick leave, holidays, and other benefits and qualified leave as determined and normally provided by the City to its employees and Department Heads. Annual vacation accrual shall have added five (5) days on a proportionate basis per pay period above that Millheim is entitled under the City Personnel Policies and Procedures. This is to recognize Millheim for extra hours worked in the performance of his duties including some holidays and weekends as the job of City Manager may require. Millheim and the City acknowledge that he is also designated the Emergency Manager for the City and occasional after business hours and weekend needs may arise in the performance of his duties. The City requires that Millheim use at least five (5) continuous vacation days each calendar year while employed with the City.

d. Salary and other benefits furnished to Millheim by the City may be reviewed and adjusted periodically by the City. Any changes to Millheim's salary shall be consistent with the City's compensation plan. Pursuant to the City's Personnel Policies and Procedures, the City reserves the right to unilaterally alter, amend, except or revoke any policy, practice, procedure or employee benefits as deemed necessary in the sole discretion of the City. Nothing herein shall be deemed to alter such right of the City to unilaterally alter, amend, except or revoke any policy, practice, procedure or employee benefit provided to Millheim and/or to amend or alter the City's compensation plan. This Agreement shall be automatically amended to reflect any salary adjustments approved by the governing body.

e. The City shall provide Millheim a vehicle during the term of this Agreement, in addition to other salary and benefits provided herein to perform necessary

job functions. The City and Millheim understand significant driving for site visits, handling citizen complaints and other coordination meetings is necessary for the performance of the job. The City agrees to pay the fuel, repairs, maintenance, registration, insurance and any other sums necessary to keep the vehicle in proper working order. The City authorizes Millheim that he may transport family members within the vehicle and that personal use of the vehicle is allowed within a sixty (60) mile radius of Farmington City. This sixty mile radius rule does not apply if the vehicle is being used to perform City related business such as, but not limited to, attending conferences and training outside of the area.

f. A personal vehicle furnished by Millheim may also be used for City business. When Millheim's personal vehicle is used for City business beyond the sixty (60) mile radius from the City, Millheim shall be entitled to collect the standard mileage reimbursement afforded full-time employees in accordance with City policy. Millheim agrees to maintain adequate liability, property damage, and comprehensive insurance coverage on the vehicle. Millheim shall be subject to and shall comply with all City risk management rules, practices, and standards and City vehicle use policies and accident review procedures applicable to City employees when using his personal vehicle on City business. Millheim should follow defensive driving techniques as suggested by the City's insurance carrier.

5. **Bonding.** The City shall pay the cost of any fidelity or other bonds required of Millheim under any law or ordinance.

6. **Office and Time Spent.** Millheim shall maintain an office in the Farmington City Hall or such other location as the City shall direct and shall spend such time in the performance of his duties for the City as is necessary or may reasonably be required from time to time by the governing body consistent with the discharge of his duties specified under this Agreement. Millheim shall be reasonably accessible during the City's business hours. Millheim shall not accept any outside employment in addition to employment with the City without the prior written approval of the governing body.

7. **Performance Evaluations.** Millheim shall be subject to annual employee performance evaluations in accordance with the City's Performance Evaluation System. In addition to formal evaluations, the Mayor and/or governing body may conduct informal evaluations from time to time.

8. **Professional Development.** The City agrees to budget for and to pay the professional dues, subscriptions, travel, courses, seminars and stipend expenses of Millheim for professional participation and travel adequate to continue his professional development. Such participation may be on City time and may include, but is not limited to, International City/County Management Association (ICMA), Utah League of Cities and Towns (ULCT), and the Utah City Manager's Association (UCMA). Any such professional development and travel expenses provided for herein shall be subject to annual budget approval by the governing body.

9. **Other Terms and Conditions of Employment.** The governing body, in consultation with Millheim, shall fix any other terms and conditions of employment as it may determine from time to time, relating to the performance of Millheim, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement and the City Ordinances. All provisions of the City's ordinances, rules and regulations pertaining to City

personnel, including the Personnel Policies and Procedures, shall apply to Millheim as they would to other employees of the City except as herein expressly modified.

10. Termination. As an at-will employee, Millheim shall serve at the pleasure of the governing body and may be terminated at any time with or without cause. Any such termination shall require a majority vote of the governing body in accordance with City Ordinances.

11. **Severance Pay and COBRA.** In the event Millheim is terminated by the governing body of the City, other than for cause, Millheim shall be entitled to receive as severance pay, a lump sum payment equal to six (6) months salary at the current rate of pay less applicable taxes and other customary deductions. In the event of termination, other than for cause, Millheim shall be paid for accrued vacation and sick leave and the City shall make the appropriate contribution to Millheim's qualified 401(a) plan for the six (6) months salary to the extent permitted by the plan. In return for severance pay, Millheim agrees to be available for consultation and assistance during such period to the new City Manager or any other Council appointee. For purposes of this Agreement, for cause termination shall be defined as set forth or contemplated in the City's Personnel Policies and Procedures. Contemporaneously with the delivery of the severance pay hereinabove set out, Millheim agrees to execute and deliver to the City a written release, releasing the City and its officers and employees of and from all claims that Millheim may have or claim against the City and its officers and employees for claims arising out of or in the course of such officer or employee's agency or employment with the City. In the event of termination, other than for cause, the City shall continue to pay for six (6) months group health and dental insurance coverage premiums for Millheim in the amount provided immediately prior to termination and in accordance with City policies and coverage plans in effect at the time. In any event, Millheim shall be afforded continued insurance coverage in accordance with the applicable terms and requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). In the event Millheim is terminated without cause by the City during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time Millheim is willing and able to perform his duties under this Agreement, then the City agrees to pay severance in accordance with this Section plus salary and benefits for any portion of the six (6) months not worked.

12. **Resignation.** Millheim shall have the right to resign at any time from his position with the City provided he gives the City forty-five (45) days advance written notice. In the event of resignation, Millheim foregoes any right to severance pay as provided herein but shall be paid for accrued vacation and sick leave at his current rate of pay.

13. Notices. Notices pursuant to this Agreement shall be given by delivering personally or by mailing the same by certified mail, return receipt requested, postage prepaid in the United States Postal Service addressed as follows:

To the City: Farmington City
Attn: Mayor
160 South Main
Farmington, UT 84025

To Millheim: Dave Millheim
537 Woodland Drive
Farmington, UT 84025

Notice shall be deemed given as of the date of personal service or as of the date of mailing such written notice as provided herein.

14. **Entire Agreement.** This Agreement contains the entire agreement concerning the employment arrangements of Millheim and shall supersede any prior agreements, promises, inducements, representations or warranties made by either party pertaining to the employment of the City Manager.

15. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, and successors in interest. Other than vested rights to benefits, Millheim's rights and interest arising under this Agreement are personal and may not be assigned.

16. **Severability.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.

17. **Indemnification.** The City agrees to defend and indemnify Millheim in any action brought against Millheim arising out of an act or omission occurring during the performance of Millheim's duties, within the scope of Millheim's employment, or under color of authority, in accordance with and subject to the provisions of the Utah Governmental Immunity Act, as set forth in Title 63, Chapter 30d, including, but not limited to, Section 63G-7-101, et seq., as amended.

18. **Amendment.** This Agreement shall not be amended except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

"CITY"

FARMINGTON CITY

ATTEST:

Holly Gadd, City Recorder

By: _____
Scott C. Harbertson, Mayor

"MILLHEIM"

By: _____
Dave Millheim

CITY ACKNOWLEDGMENT

STATE OF UTAH)

:SS.

COUNTY OF DAVIS)

On the ____ day of August, 2013, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson acknowledged to me that the City executed the same.

Notary Public

MILLHEIM ACKNOWLEDGMENT

STATE OF UTAH)

:SS.

COUNTY OF DAVIS)

On the _____ day of August, 2013, personally appeared before me **DAVE MILLHEIM**, who being duly sworn, did say that he is the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Notary Public



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: August 23, 2013

SUBJECT: **MILLER MEADOWS PHASE 5 FINAL PLAT**

RECOMMENDATION

Grant final plat approval for the Miller Meadows Phase 5 subdivision consisting of 10 lots on 3.92 acres located at approximately 450 West 600 South in the AE Zone subject to the motion and findings recommended by the Planning Commission as set forth in the enclosed Planning Commission Staff Report dated August 15, and the minutes for that meeting.

BACKGROUND

The applicant, Rainey Homes received a recommendation for final plat approval from the Planning Commission for Phase 5 of the Miller Meadows subdivision on August 15, 2013. Additional background information is contained in the attached staff report. This is not a public hearing.

Respectfully Submitted

David Petersen
Community Development Director

Concur

Dave Millheim
City Manager



Planning Commission Staff Report August 15, 2013

Item 3: Final Plat for the Miller Meadows Conservation Subdivision Phase 5

Public Hearing:	No
Application No.:	S-04-13
Property Address:	Approximately 450 West 600 South
General Plan Designation:	AG (Agricultural Preservation)
Zoning Designation:	AE (Agricultural Estates)
Area:	3.92 acres
Number of Lots:	10
Property Owner:	West Glen Corporation
Agent:	Rainey Homes (Brock Johnston)

Request: Applicant is requesting a recommendation for approval of the Final Plat Revisions for the Miller Meadows Conservation Subdivision Phase 5.

Background Information

The Miller Meadows Subdivision Preliminary Plat approval approved by the City some time ago has progressed in phases. In July of 2007, the Planning Commission and City Council approved the Miller Meadows Phase 4 Final, with the condition that the developers revise the phasing plan for the project. That was done, and there were to be a total of 7 phases when the project was complete. The applicant has since returned with a new Master Development Plan and received Schematic Plan approval from City Council on August 2, 2011 increasing the number of lots from 110 to 117 and eliminating the two easterly conservancy lots. With Schematic Plan approval, came an amendment to the Master Development Plan, hence, the applicant sought a new Preliminary Plat approval which the Planning Commission granted on August 25, 2011.

The applicant, Rainey Homes, is now requesting Final Plat approval for the Miller Meadows Phase 5 Conservation Subdivision consisting of 10 lots on 3.92 acres on property located at approximately 450 West 600 South. The development has been broken down into smaller phases and has changed the number of lots, layout and overall design of the project slightly. This plat is consistent with the overall schematic plan as well as the previously approved preliminary subdivision plat for the entire project within which these lots are located. The biggest issue with the elimination of the easterly conservancy lots has provided a chance for adjacent property owners in Phases 2 & 3 to buy part of the leftover land. With these additions, the lots already recorded will need to undergo boundary adjustments prior to final plat recordation to properly show the correct property lines in Phases 2 & 3. The Street Tree Plan has

also been submitted with the Final Plat as the City made a mistake in not obtaining that at Preliminary Plat approval. The Planning Commission may grant that approval now.

Suggested Motion

Move that the Planning Commission approve the Street Tree Plan and recommend that the City Council approve the Final Plat for the Miller Meadows Conservation Subdivision Phase 5 subject to all applicable Farmington City ordinances and development standards and the following conditions:

1. The applicant continues to work with the City and other agencies to address any outstanding issues remaining with regard to the Final Plat;
2. The applicant must ensure compliance to all Scenic Byway Overlay Zone Design Theme, Standards, and Guidelines as set forth in Chapter 41 of the Zoning Ordinance;

Findings for Approval:

1. The proposed subdivision is desirable in that the platting of the property in this area will provide a cleaner description and record of the properties and residences in the subject area.
2. The proposed Final Plat submittal is consistent with all necessary requirements for a Final Plat as found in Chapter 6 of the City's Subdivision Ordinance.

Supplemental Information

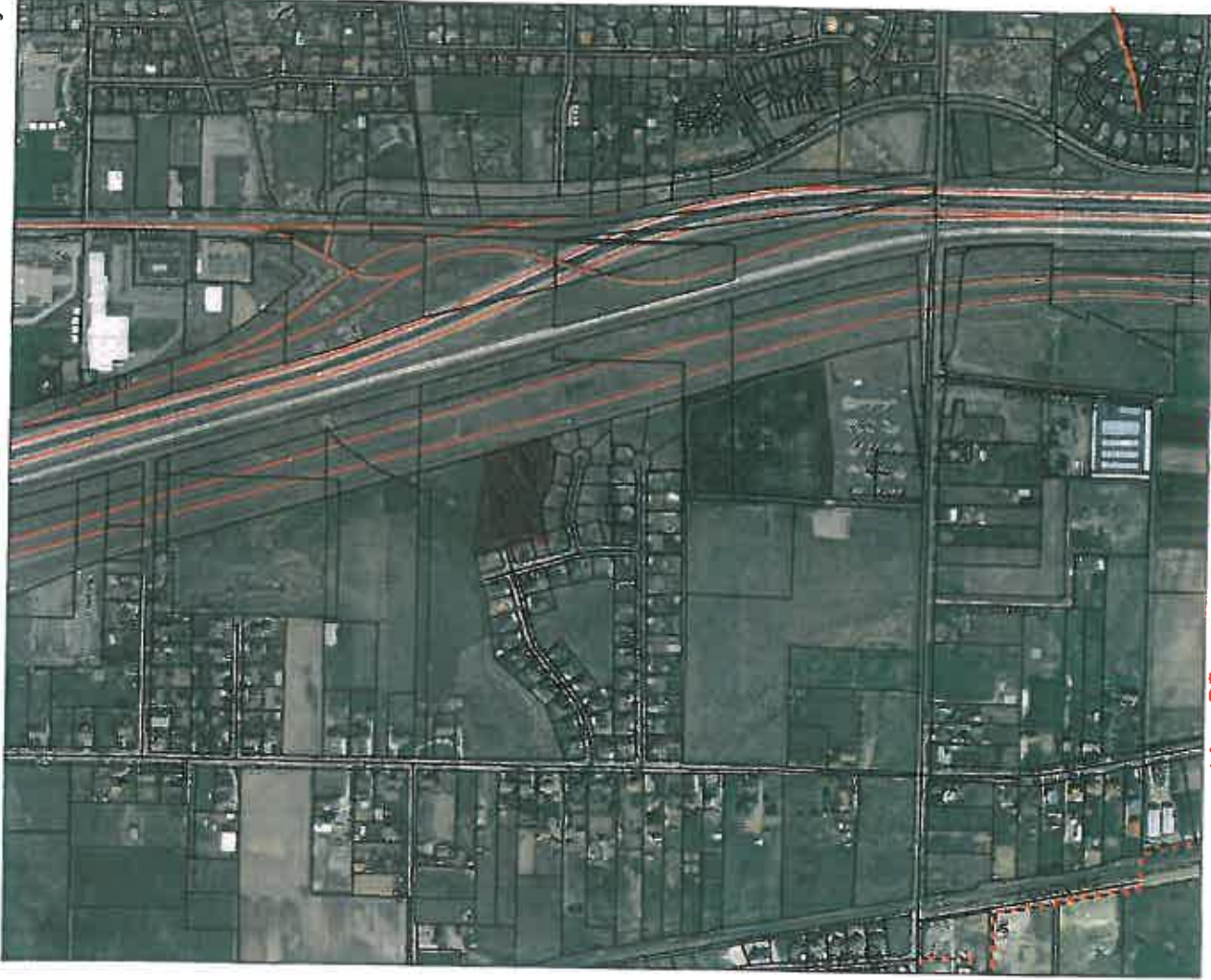
1. Miller Meadows Conservation Subdivision Phase 5 Vicinity Map
2. Miller Meadows Conservation Subdivision Phase 5 Final Plat
3. Miller Meadows conservation Subdivision Phase 5 Street Tree Plan

Applicable Ordinances

1. Title 12, Chapter 6 – Major Subdivisions
2. Title 12, Chapter 7 – General Requirements for All Subdivisions
3. Title 11, Chapter 11 – Single Family Residential Zones
4. Title 11, Chapter 41 – Scenic Byway Overlay Zone
5. Title 11, Chapter 12 – Conservation Subdivision Development Standards



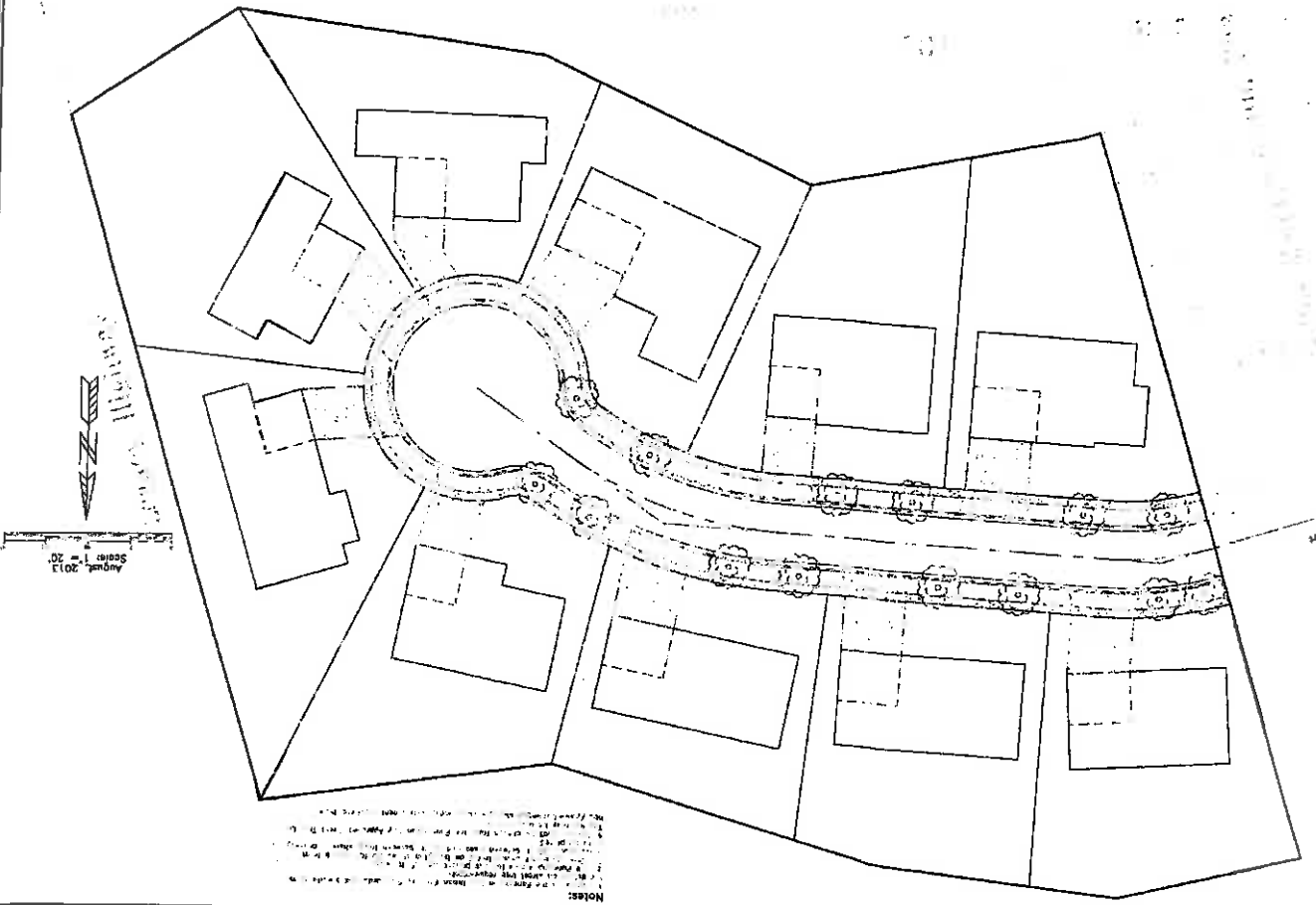
Farmington City



Tuesday, February 24, 2009 10:46:54 AM
M:\Project\Current\Map.mxd

**MILNER MEADOWS I-5
VICINITY MAP**





Notes:
 1. All dimensions are in feet and inches.
 2. All dimensions are to the centerline of the driveway.
 3. All dimensions are to the outside of the building footprint.
 4. All dimensions are to the centerline of the driveway.
 5. All dimensions are to the outside of the building footprint.
 6. All dimensions are to the centerline of the driveway.
 7. All dimensions are to the outside of the building footprint.
 8. All dimensions are to the centerline of the driveway.
 9. All dimensions are to the outside of the building footprint.
 10. All dimensions are to the centerline of the driveway.

Scale: 1" = 20'
 August, 2013

Revisions	Date	By
1. Initial Design	8/1/13	JLB
2. Final Design	8/1/13	JLB
3. Final Design	8/1/13	JLB
4. Final Design	8/1/13	JLB
5. Final Design	8/1/13	JLB
6. Final Design	8/1/13	JLB
7. Final Design	8/1/13	JLB
8. Final Design	8/1/13	JLB
9. Final Design	8/1/13	JLB
10. Final Design	8/1/13	JLB

Cedar Meadows Phase 5
 Street Tree Plan
 for Building Footprint

Balling Engineering
 Civil Engineering • Surveying • Planning
 500 E. 12th Ave. Suite 100
 Fort Collins, CO 80501
 Phone: (970) 225-2222
 Fax: (970) 225-2223



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: August 23, 2013

SUBJECT: **OAKWOOD ESTATES PHASE 6 FINAL PLAT**

RECOMMENDATION

Grant final plat approval for the Oakwood Estates Phase 6 subdivision consisting of 2 lots on 0.91 acres located at approximately 500 West between Oakwood Circle and Oakwood Place in an LR-F Zone subject to the motion and findings recommended by the Planning Commission as set forth in the enclosed Planning Commission Staff Report dated August 15, and the minutes for that meeting.

BACKGROUND

The applicant, Lew Swain, received a recommendation for final plat approval from the Planning Commission for Phase 6 of the Oakwood Estates subdivision on August 15, 2013. Additional background information is contained in the attached staff report. This is not a public hearing.

Respectively Submitted

David Petersen
Community Development Director

Concur

Dave Millheim
City Manager



Planning Commission Staff Report August 15, 2013

Item 4: Final Plat for the Oakwood Estates Phase 6 Conservation Subdivision

Public Hearing:	No
Application No.:	S-13-13
Property Address:	Approximately 500 West and between Oakwood Circle and Oakwood Place
General Plan Designation:	LDR (Low Density Residential)
Zoning Designation:	LR-F (Large Residential Foothill)
Area:	.91 Acres
Number of Lots:	2
Property Owner:	Shepard Ridge Enterprises L.C.
Agent:	Lew Swain

Request: Applicant is requesting Final Plat approval for the Oakwood Estates Phase 6 Conservation Subdivision.

Background Information

The applicant, Shepard Ridge Enterprises L.C., is requesting Final Plat approval for Phase 6 of his 17-lot conservation subdivision on property located at approximately 500 West and between Oakwood Place and Oakwood Circle. The proposed Final Plat for Phase 6 contains a total of 2 lots on .91 acres of property. The underlying zone for this property is an LR-F zone. The proposed Final Plat for Phase 6 is consistent with the previously approved Preliminary Plat for the subdivision. There were no issues found with the Final plat and the plan is acceptable with no revisions.

Suggested Motion:

Move that the Planning Commission recommend that the City Council approve the Final Plat for the Oakwood Estates Phase 6 Conservation Subdivision subject to all applicable Farmington City ordinances and development standards.

Findings for Approval:

1. The proposed Final Plat is consistent with the previously approved Preliminary Plat for the subdivision.

2. The proposed subdivision meets all the requirements for approval of a Final Plat.

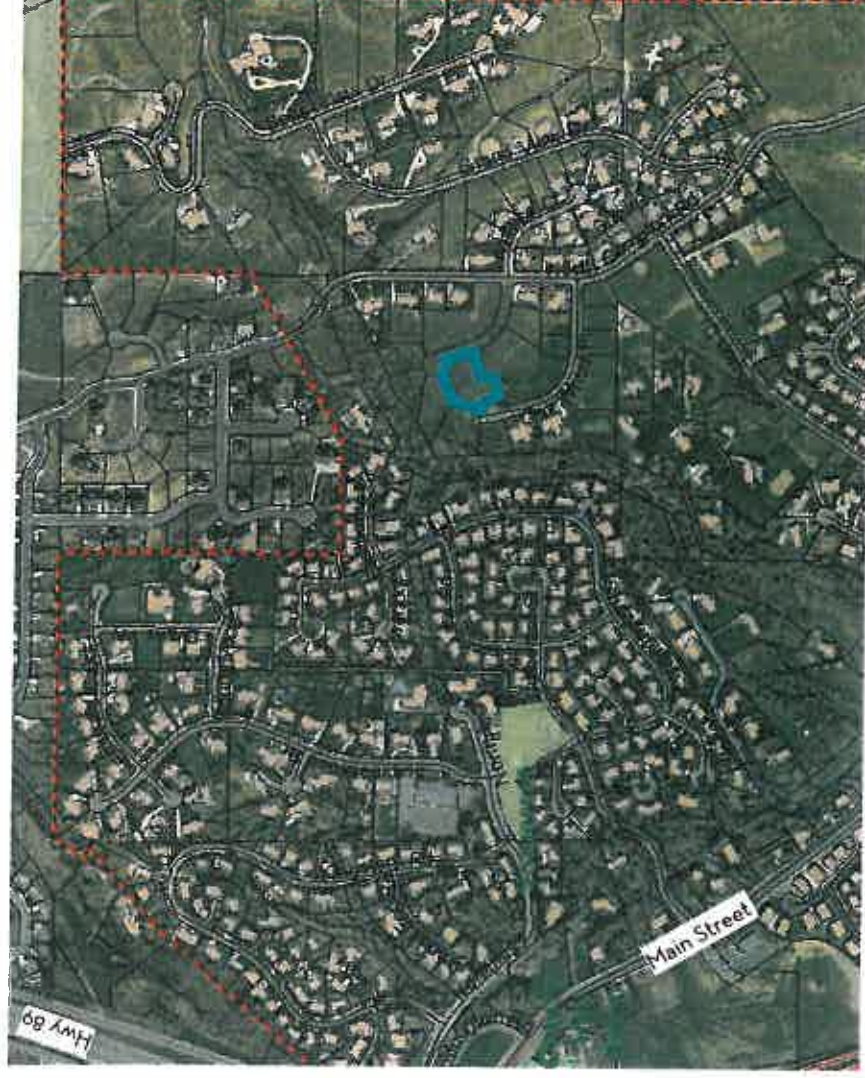
Supplemental Information

1. Vicinity Map
2. Final Plat

Applicable Ordinances

1. Title 12, Chapter 6 – Major Subdivisions
2. Title 12, Chapter 7 – General Requirements for All Subdivisions
3. Title 11, Chapter 11 – Single-Family Residential Zones
4. Title 11, Chapter 12 – Conservation Subdivisions
5. Title 11, Chapter 30 – Foothill Development Standards

Oak Wood Estates Phase 6 - Vicinity Map





FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Dave Millheim, City Manager

Date: August 29, 2013

SUBJECT: **STREET LIGHT FIXTURE CHANGE OUT PROPOSAL**

RECOMMENDATIONS

1. Authorize the Mayor to execute the attached performance auditing agreement with Siemens Industry, Inc which will govern the retrofit and/or replacement of existing high pressure sodium and metal halide fixtures with induction technology for City Street lights.
2. Authorize the City Manager to accept the equipment financing proposal from PNC Finance in the amount of \$549,010.69 and to prepare the necessary contract documents to allow the fixture change out to proceed with both PNC and Siemens Industries.

BACKGROUND

In April of this year, Staff was directed by the City Council based on a letter of intent from Siemens Industry to study changing out city street light fixtures to adapt to new technologies which would yield lower energy costs. Field trips were taken, utility bills reviewed, sample fixtures were installed, evaluated and lastly financing proposals were solicited. Based on that effort, we intend to change out approximately 900 light fixtures servicing Farmington in the next few months. Total energy savings gained, by switching to the new fixtures, over an eleven year payback are estimated to be between \$722,430 and \$741,527. The performance auditing agreement basically puts Siemens on the hook to guarantee those savings and to cover any costs born above the \$741,527 level through an annual billing review and reconciliation process.

A challenge for most municipal agencies is even when the energy savings (over time) justifies such an upgrade is how to pay for the large capital outlay. The strength of this proposal is through the guarantee agreement with Siemens we pay for the upgrade from the energy savings we obtain on an annual basis and with today's low interest rates,

financing costs are minimal. An added benefit is we get all new fixtures throughout the City and the corresponding warranties on installation.

Staff in cooperation with Siemens solicited financing proposals for the physical change out. A copy of that RFP, bid matrix and recommended financing proposal is attached. Siemens representatives will be present with staff in the work session to cover any final questions the Council may have with this project.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Dave Millheim", with a stylized flourish at the end.

Dave Millheim
City Manager

PERFORMANCE CONTRACTING AGREEMENT

between

Farmington City, Utah]

and

**Siemens Industry, Inc.,
Building Technologies Division**

TABLE OF ARTICLES

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work by SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

PERFORMANCE CONTRACTING AGREEMENT

Number: 30453320

Article 1 AGREEMENT

THIS PERFORMANCE CONTRACTING AGREEMENT ("Agreement") is made this day of (the "Effective Contract Date", defined below), by and between Siemens Industry, Inc., Building Technologies Division ("SIEMENS") and the party identified below as the CLIENT.

The CLIENT: Farmington City, Utah

160 S Main Street
Farmington, Utah

DESIGNATED REPRESENTATIVE: Dave Millheim
PHONE: 801.939.9203 FAX:

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: Sandy, Utah
9707 S Sandy Parkway Blvd
Sandy, Utah 84070

DESIGNATED REPRESENTATIVE: Mark Cram
PHONE: 801.230.4759 FAX:

For Work and Services in connection with the following project (the "Project"):

Farmington City Utah City-Wide Street Lighting]

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

]

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D	N/A

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **Farmington City, Utah**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement.

"Acceptance" means the CLIENT has signed, or is deemed to have signed, a Certificate of Substantial Completion.

"Acceptance Date" means the date on which the CLIENT signs or is deemed to have signed a Certificate of Substantial Completion.

"Annual Performance Assurance Report" means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

"Annual Period" means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

"Annual Realized Savings" means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

"Applicable Law" means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

"Baseline" means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

"Baseline Period" means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

"BTU" means a British Thermal Unit and is a unit of thermal energy.

"Capital Off-Set Savings" means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

"Certificate of Substantial Completion" means the document indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement.

"CLIENT Representative" means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

"Construction Period" means the period between the Effective Contract Date and the first day of the month following the date of Substantial Completion.

"Construction Period Savings" means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

"Contracted Baseline" means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

"Deferred Maintenance" means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

"Deliverables" shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

"Effective Contract Date" is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

"Energy Conservation Measure" or **"ECM"** means the SIEMENS' Products and/or other third party equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

"Equipment" means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

"Escalation Rate" means an annual percentage increase to be applied to the previous year's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different

PERFORMANCE CONTRACTING AGREEMENT

Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

“Facility” or “Facilities” means the building(s) or structure(s) where Work will be installed or implemented.

“Facility Improvement Measures” or “FIMs” means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

“FEMP” means the Federal Energy Management Program managed by the United States Department of Energy.

“FEMP Guidelines” means the FEMP M&V Guidelines v. 3.0 published by FEMP as *M&V Guidelines; Measurement and Verification for Federal Energy Management Projects*.

“Guarantee Date” means the first day of the month following the date on which the CLIENT executes the final Certificate of Substantial Completion, thus indicating that the Construction Period is complete.

“Guaranteed Annual Savings” are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

“Guaranteed Measured & Verified Savings” means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

“Guaranteed Savings” means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period, as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

“Hazardous Materials” refers to the definition found in Section 11.1.

“Instruments” means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS and used by SIEMENS to provide an ECM or a FIM. Instruments excludes Work Product Deliverables.

“Intellectual Property Rights” or “Intellectual Property” means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

“IPMVP” means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

“kW” and “kWh” means kilowatt and kilowatt hour, respectively.

“Maintenance Services Program” or “MSP” means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

“Material Change” means a measurable deviation in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

“Measured & Verified Savings” means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

“Oil” refers to the definition found in Section 11.1.

“Operational Savings” means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

“Parties” means the CLIENT and SIEMENS.

PERFORMANCE CONTRACTING AGREEMENT

"Performance Assurance" is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

"Performance Assurance Services Program" or "PASP" means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

"Performance Guarantee" means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

"Performance Guarantee Period" means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

"Permitted Users" means the CLIENT, its employees and agents.

"Savings" means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

"Savings Shortfall" means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

"Services" means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

"SIEMENS Pre-existing Intellectual Property" means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

"SIEMENS Product" means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

"Software Product" means any software that is owned or licensed by SIEMENS or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Equipment.

"Stipulated Savings" are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

"Substantial Completion" or "Substantially Complete" means the Work, or any identifiable portion thereof, is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes. To the extent that the Work requires multiple Acceptances, the Work's final Substantial Completion date shall determine the Guarantee Date.

"Therm" is a measure of energy equal to 100,000 BTUs.

PERFORMANCE CONTRACTING AGREEMENT

"Total Guaranteed Savings" means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

"Work" means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

"Work Product Deliverable" means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement.

Article 3

General

- 3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.
- 3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS's organizational documents, any Applicable Law, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
 - (d) To SIEMENS's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
 - (e) It is duly authorized to do business in all locations where the Work and Services are to be performed.
- 3.5 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
 - (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
 - (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

PERFORMANCE CONTRACTING AGREEMENT

Article 4

Performance Guarantee

- 4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.
- 4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."
- (a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.
- (b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.
- 4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's knowledge of any Material Change.
- 4.5 Within thirty (30) days of notice of a Material Change, SIEMENS's discovery of a Material Change and with prompt notice to CLIENT, SIEMENS will either:
- (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
- (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.
- 4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:
- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
- (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
- (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.
- (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT's acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- 4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and

PERFORMANCE CONTRACTING AGREEMENT

SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.

- 4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The CLIENT's cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.
- 4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse affect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense in order to determine if a Material Change has occurred.
- 4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
 - (b) Provide access to any Facility where Work is to be performed;
 - (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.
- 4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such notice indicate that the CLIENT has selected one of the following:
- (a) The CLIENT will re-invest the avoided cost of cancellation of the PASP into Facility improvements and services that improve the overall Facility's performance and which improvements and services are implemented by SIEMENS; or,
 - (b) The CLIENT will pay to SIEMENS 100% of the remaining value left in the PASP Annual Period, as a liquidated damage and not as a penalty, to compensate SIEMENS for SIEMENS's up-front costs and expenses in preparing to perform the PASP as contracted for the Annual Period.
- 4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

PERFORMANCE CONTRACTING AGREEMENT

Article 5

Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. All SIEMENS Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS's property including the SIEMENS Pre-existing Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. SIEMENS hereby grants the CLIENT a royalty-free (once payments due under this Agreement are paid to SIEMENS), non-transferable, perpetual, nonexclusive license to use any SIEMENS Pre-existing Intellectual Property solely as incorporated into the Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:
- (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
 - (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and,
 - (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided. All Deliverables provided to the CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and the CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS's express written consent.
- 5.4.1 Any reuse of such Deliverables or such Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.
- 5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.
- 5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.
- 5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS's work and/or presence at the Facility shall not relieve others of their responsibility to the CLIENT or to others.
- 5.6 SIEMENS warrants that:
- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.

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- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS's or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS's nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS's option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS's warranty liability shall not **exceed** the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc., unless covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS's control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

Article 6

The CLIENT's Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;

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- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
 - (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
 - (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files for a period of fifteen (15) years from the Effective Contract Date;
 - (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
 - (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known or suspected Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
 - (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
 - (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
 - (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;
 - (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;
 - (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
 - (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.
- 6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS's express written consent.
- 6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

- 7.1 As the Work is performed, Applicable Law or conditions may change, or circumstances outside SIEMENS's reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in

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which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS's compensation and the time for performance. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.

- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and expenses of termination, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.

Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS's costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS's fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
 - (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS's normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

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Article 9

Acceptance

- 9.1 When SIEMENS believes that all, or an independent, definable phase or portion, of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will accept that Work by signing the Certificate of Substantial Completion and returning it to SIEMENS;
 - (b) If the CLIENT does not concur that the Work is Substantially Complete, then the CLIENT shall notify SIEMENS within five (5) business days of any discrepancies;
 - (c) To the extent SIEMENS does not dispute the discrepancies raised by the CLIENT, SIEMENS shall correct the Work to conform to the description of the Work set forth herein, and resubmit the Certificate of Substantial Completion to the CLIENT;
 - (d) If SIEMENS disagrees with the discrepancies raised by the CLIENT, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If the CLIENT Representative does not deliver written notice to SIEMENS within five (5) business days of receiving the Certificate of Substantial Completion, in the mutual interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.
- 9.2 To the extent that this Project requires multiple Certificates of Substantial Completion, the final Certificate of Substantial Completion shall determine the date on which the Construction Period is completed.
- 9.3 Any disputes concerning the Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

Article 10

Insurance and Allocation of Risk

- 10.1 SIEMENS shall maintain, at SIEMENS's expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:
- (a) Workers' Compensation at the statutory amounts and limits as prescribed by Applicable Law.
 - (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
 - (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS's operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:
 - Limits of liability shall be \$1,000,000 per occurrence/aggregate
 - (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:
 - \$1,000,000 per occurrence/aggregate
 - (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:

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- \$5,000,000 per occurrence/aggregate

- 10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS's services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.
- 10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.
- 10.4 SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS's performance of the Work or Services. SIEMENS's obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT. The preceding limit shall not apply to the CLIENT's remedy under the Performance Guarantee as such is limited by Section 4.8.
- 10.5 As to Patents and Copyrights:
- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to

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constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.

- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT's design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

Article 11

Hazardous Materials Provisions

- 11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.
- 11.2 The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by Applicable Law.
- 11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remediating or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.

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- 11.4 Except where expressly prohibited by Applicable Law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from the CLIENT's breach of, or failure to perform its obligations under this Article.
- 11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT's directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT's books or records; and, "due inquiry" means inquiry of those persons under the CLIENT's control who should have knowledge of the subject matter of such inquiry.

Article 12

Miscellaneous Provisions

- 12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.
- 12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.
- 12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.
- 12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.
- 12.5 Unless contrary to Applicable Law and with the exception of disputes arising under Article 4 or Article 9, all disputes not resolved by negotiation between the Parties shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the Parties. The arbitrator shall have no authority to award, and shall not award, attorneys' fees. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter.
- 12.6 SIEMENS's performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement.
- 12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.
- 12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.
- 12.9 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$547,588. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

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Article 13

Maintenance Services Program

- 13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.
- 13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense.
- 13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT's sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS's sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSP and adjust the MSP payments due hereunder accordingly.
- 13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT's failure to execute such statement within ten (10) days will void the MSP and release SIEMENS from any further obligations with respect to the MSP.
- 13.6 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of FIM Work, the CLIENT shall pay to SIEMENS the Contract Sum of \$547,588.
- 1.2 **Escrow:** The CLIENT has agreed to deposit the Price into an Escrow Account at a financial institution satisfactory to both the CLIENT and SIEMENS. All expenses to establish the Escrow Account shall be the complete responsibility of the CLIENT and the CLIENT will receive all interest earnings from the Escrow Account. SIEMENS will submit periodic invoices to the CLIENT based on the Payment Schedule in Table B.1 below. The CLIENT shall be responsible for submitting the necessary documents to the Escrow Agent to allow for timely disbursements from the Escrow Account. The funding of the Escrow Account in an amount equal to or greater than the Price stated in Article 1.1 above shall be a condition precedent to SIEMENS obligation to perform or to continue the performance of the Work. If the Escrow Account is not funded within thirty (30) days of the execution of this Agreement, this Agreement shall be null and void. This thirty (30) day funding period may be extended as mutually agreed in writing by the Parties. In the event that the Agreement becomes null and void as described in this paragraph and CLIENT has previously authorized SIEMENS to proceed with the Work, the CLIENT shall be obligated to reimburse SIEMENS either: (i) for the Work performed to date; or (ii) for the Work specifically authorized by the CLIENT.
- 1.3 **Timely Payments:** The CLIENT agrees to pay Siemens per Table B.1 below. CLIENT agrees to pay all invoices submitted by SIEMENS per Agreement, Article 8.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Phase I - Mobilization	\$70,000	15%	At Project Start
Phase II – 30%	\$100,000	20%	At 30% Complete
Phase III – 60%	\$175,000	30%	At 60% Complete
Phase IV – 90%	\$175,000	30%	At 90% Complete
Retainage	\$27,588	5%	At Project Completion
PROJECT TOTAL:	\$547,588	100%	

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

SIEMENS:

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Annual Payments (\$)	Notes
	\$3,052	Year 1
	\$3,113	Year 2
	\$2,064	Year 3
	\$2,105	Year 4
	\$2,147	Year 5
	\$2,190	Year 6
	\$2,234	Year 7
	\$2,279	Year 8
	\$2,324	Year 9
	\$2,371	Year 10
	\$2,418	Year 11

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of South Ogden, Utah

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data

Table 1.1 – Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW)	Natural Gas Saved (Therms)	No. 2 Fuel Oil Saved (Gallons)	Water Saved (Gallons)
Construction	0	N/A	N/A	N/A	N/A
Annual Period 1	322,243	N/A	N/A	N/A	N/A

- 1.1 Only Annual Period 1 is shown as the energy/utility unit Savings will remain constant for each Annual Period of the Performance Guarantee Period as the CLIENT will operate the Facility in accordance with the Contracted Baseline identified in Article 7.

Table 1.2 – Total Guaranteed Savings (Cost)

Performance Period	Energy/Utility Savings	Operational Savings	Total Savings
Construction	\$0	\$0	\$0
Annual Period 1	\$20,409	\$37,352	\$57,761
Annual Period 2	\$21,225	\$38,286	\$59,511
Annual Period 3	\$22,074	\$39,243	\$61,317
Annual Period 4	\$22,957	\$40,224	\$63,182
Annual Period 5	\$23,876	\$41,230	\$65,105
Annual Period 6	\$24,831	\$42,260	\$67,091
Annual Period 7	\$25,824	\$43,317	\$69,141
Annual Period 8	\$26,857	\$44,400	\$71,257
Annual Period 9	\$27,931	\$45,510	\$73,441
Annual Period 10	\$29,049	\$46,648	\$75,696
Annual Period 11	\$30,210	\$47,814	\$78,024
TOTALS	\$275,245	\$466,283	\$741,527

- 1.2 Table 1.2 shows the CLIENT'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6.
- 1.3 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.

- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-FIM. Rather, the calculation of Savings is based on aggregate performance of all of the FIMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

This Exhibit C, comprising 14 pages, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Farmington, Utah

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 2: Measurement and Verification Options

2.1 Measurement and Verification Options: There are five measurement and verification options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D – Calibrated Simulation. Options A through and including D are part of the IPMVP. Option E- Stipulated is based on industry accepted engineering standards and is the Option used for purposes of calculating Operational Savings.

Option A - Retrofit Isolation: Key Parameter Measurement. Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM's affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B – Retrofit Isolation: All Parameter Measurement. Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility's energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option E – Stipulated: This Option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further

Exhibit C – Performance Assurance
Farmington, Utah

measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

- 2.2 Table 2.1 below summarizes the first Annual Period's Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Measurement and Verification Options as applied to the referenced FIMs valued pursuant to the agreed upon amounts identified in Article 6 hereof.

Table 2.1 – Savings for First Annual Period by Option

FIM	Energy/Utility Savings \$						Operational Savings \$	Total Savings \$
	Measurement and Verification Options						E Stipulated	
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy/Utility Savings		
1.00 Lighting Retrofits (Street Lights)	\$20,409	-	-	-	-	\$20,409	\$37,352	\$57,761
2.00 Lighting Relocation (Street Lights)	-	-	-	-	-	-	-	-
TOTALS	\$20,409	-	-	-	-	\$20,409	\$37,352	\$57,761

[1] Operational savings are detailed in Exhibit C, Article 2, Table 2.2.

- 2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by the Parties. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on CLIENT'S affirmation. **OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.**

Table 2.2 - Source of Operational Savings

Account/Vendor	Description	Annual Cost \$	# of Annual Periods Savings Are Applied	Annual Period Savings Begin
	Avoided Labor and Material Service Costs	\$37,352	11	1

2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: Farmington City

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Performance Guarantee Period Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate Facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage: and
 - (a)
Up-to-Date Lamp Replacement Log.
- 3.3 If applicable, the CLIENT will provide SIEMENS with copies of utility bills within thirty (30) days of receipt by the CLIENT or provide access to utility vendor information to allow SIEMENS to include a utility bill analysis in the Annual Performance Assurance Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C and is not used to measure the Project's performance.

Article 4: Measurement and Verification Plan

The following information is applicable to this Agreement:

- Article 4.1 General Overview
- Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement
- Article 4.3 Option B - Retrofit Isolation: All Parameter Measurement
- Article 4.4 Option C - Whole Facility
- Article 4.5 Option D - Calibrated Simulation
- Article 4.6 Option E – Stipulated-Energy/Utility Savings

4.1 General Overview –

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption or efficiencies. The Baseline usage, consumption or efficiencies are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 FIM 1.00 –Lighting Retrofits (Street Lights)

Description

YEAR 0 COMMISSIONING:

- Verify Utility (RMP) Bill tariffs are changed to ‘12E Non-Listed Luminaires’ at the proposed wattages.

For areas which include direct lamp (kit) and head replacements:

- Visually inspect 10% of fixtures and record finding on printout of detailed lighting audit.
- Attach detailed lighting audit with results of 10% spot check to report.
- Verify O&M Manuals provided
- Provide Lamp Replacement Log to CLIENT
- Provide Report to CLIENT

YEARS 1-11 MEASUREMENT AND VERIFICATION:

- Verify Utility (RMP) Bill tariffs are changed to ‘12E Non-Listed Luminaires’ at the proposed wattages.
- Review Lamp Replacement Log (Maintained by CLIENT)
- Provide report to CLIENT.

Responsibility for SIEMENS and CLIENT

The CLIENT will provide a representative at each facility to coordinate work and provided required data described below. CLIENT will provide access to all spaces required for any pre measurement and post measurement.

The CLIENT will provide SIEMENS with accurate facility operating information, as defined below, and the Contracted Baseline article of this Section during each Annual Period, as such information becomes available to the CLIENT.

4.2.2 FIM 2.00 –Lighting Relocation (Street Lights)

Description

YEAR 0 COMMISSIONING:

- Visually inspect all (21) relocated fixtures and record finding on printout of detailed lighting audit.
- Attach detailed lighting audit with results of verification, to report.
- Provide Report to CLIENT

YEARS 1-11 MEASUREMENT AND VERIFICATION:

- No savings are claimed for this measure; therefore, no M&V plan is included.

Responsibility for SIEMENS and CLIENT

The CLIENT will provide a representative at each facility to coordinate work and provided required data described below. CLIENT will provide access to all spaces required for any pre measurement and post measurement.

The CLIENT will provide SIEMENS with accurate facility operating information, as defined below, and the Contracted Baseline article of this Section during each Annual Period, as such information becomes available to the CLIENT.

- 4.3 Option B - Retrofit Isolation: All Parameter Measurement – NOT USED**
- 4.4 Option C - Whole Facility – NOT USED**
- 4.5 Option D – Calibrated Simulation – NOT USED**
- 4.6 Stipulated-Energy/Utility Savings – NOT USED**

Article 5: Baseline Data

- 5.1 **Street Lights:** The period selected as the Baseline is January, 2012. Table 5.1.1 outlines the current owner of each utility line item (in contract), the quantity of lamps in that line item, the nominal and system wattage, tariff, \$/month and run hours. The system wattage (lamp and ballast) and run hours establish the Baseline. This Baseline will be used as the reference that future years utilities will be compared to in order to determine if the correct post-retrofit tariff is being billed to the CLIENT.

Table 5.1.1 Baseline Tariff (Street Lights)

Owner	Utility Bill Item #	Quantity	Lamp Type	Lamp Wattage	\$/Mo	Tariff Schedule	Run Hours	Existing Wattage/Lamp	Yearly kWh
City	111	3	HPS	70	\$1.83	12E	3940	86	1,017
City	112	645	HPS	100	\$2.50	12E	3940	126	320,204
City	113	22	HPS	150	\$3.66	12E	3940	188	16,296
City	114	10	HPS	250	\$6.52	12E	3940	295	11,623
City	115	46	HPS	400	\$10.02	12E	3940	457	82,627
City	116	30	MH	70	\$1.82	12E	3940	93	10,993
City	117	30	MH	100	\$2.55	12E	3940	125	24,625
City	118	65	MH	150	\$3.21	12E	3940	173	44,305
City	119	2	MH	175	\$4.46	12E	3940	210	1,655
City	120	1	MV	100	\$2.55	12E	3940	125	493
City	121	27	MV	175	\$6.06	12E	3940	205	21,808
Total		901						Total	535,844

*\$/Mo.- Does not include other customary monthly fee's and/or charges, see Article 6.

**The column labeled 'Existing Wattage/Lamp' is System Wattage (lamp and ballast).

- 5.2 The operating practices during the Baseline Period determine the utility consumption shown in Table 5.1.1. This data indicates the operating characteristics that were in effect during the Baseline Period. The Guaranteed Savings provided under this Agreement are based on implementing the Contracted Baseline in Article 7 of this Exhibit C.
- 5.3 Applicable codes - Federal, State, County or Municipal codes or regulations are applicable to the use and operation of the Facility. SIEMENS will maintain the current level of Facility compliance relative to applicable codes unless specifically outlined to the contrary below. Unless specifically set forth in the Scope of Work and Services, Exhibit A, nothing herein should be construed as to require SIEMENS to provide additional work or services in the event that the current applicable code or regulation is modified.
- 5.4 Building Inventory - The quantities listed in Tables 5.1.1 summarize the equipment inventory included in this project and that existed in the Facility during the Baseline Period.

Article 6: Utility Rate Structures and Escalation Rates

- 6.1 Utility costs used for savings calculations will be based on the utility tariff in effect for the predominant bill and rate escalation percentages as noted below. Each escalation rate will be applied annually to the utility tariff.

Street Light Tariffs:

Electric Rate – Schedule 12E

Service Provider: Rocky Mountain Power

Sub-Schedule:

12E – Energy Only, Stipulated Run Hours: 3940 hrs/yr

Other Charges: Including Customer Efficiency Services,
Home Elec Lifeline Program and Taxes

Project savings are based on the technology (Lamp Type) change (HPS, MV and MH) to Induction lamps within the 12E Tariff. Savings Guarantee does not include other fee's and charges from RMP.

Post-Retrofit (Street Lights) – All luminaires will be billed at the 12E (Energy Only Service) rate. See Table 7.1.1.

Rate Escalation: 4% per Annual Period– Years 0 thru 11

Article 7: Contracted Baseline Data

- 7.1 The following tables detail the Facility operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of Facility operating parameters is the Contracted Baseline and failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Table 7.1.1 Post-Retrofit Lamp Tariffs (Street Lights)

Owner	Utility Bill Item #	Quantity	Technology	Custom Lamp Wattage	\$/kWh	Mo. Cost Per lamp	Tariff Schedule	Run Hours	Yearly kWh
City	111	3	Induction	37	\$0.065279	\$0.79	12E	3940	437
City	112	645	Induction	43	\$0.065279	\$0.92	12E	3940	109,276
City	113	22	Induction	89	\$0.065279	\$1.91	12E	3940	7,715
City	114	10	Induction	126	\$0.065279	\$2.70	12E	3940	4,964
City	115	16	Induction	156	\$0.065279	\$3.34	12E	3940	28,273
City	116	30	Induction	37	\$0.065279	\$0.79	12E	3940	4,373
City	117	50	Induction	43	\$0.065279	\$0.92	12E	3940	8,471
City	118	65	Induction	89	\$0.065279	\$1.91	12E	3940	22,793
City	119	2	Induction	89	\$0.065279	\$1.91	12E	3940	701
City	120	1	Induction	43	\$0.065279	\$0.92	12E	3940	169
City	121	27	Induction	89	\$0.065279	\$1.91	12E	3940	9,468
Total		901						Total	196,641

*Tariff Cost Per lamp/Mo.- Does not include other customary monthly charges, see Article 6.

*Savings Baseline = (Pre-Retrofit kWh – Post Retrofit kWh)*0.95(5% Derate)*1.04(Year 0 escalation) = (535,844 kWh – 196,641 kWh)*0.95 = 322,243



August 12, 2013

Mr. Dave Millheim,
City Manager
160 South Main Street
Farmington City, UT 84025

Subject: Farmington City Energy Performance Contract
Results of Request for Proposal dated August 1, 2013

Dear Mr. Millheim,

On August 1, 2013, Siemens Industry, Inc., Building Technologies division solicited financing proposals on behalf of Farmington City, Utah to fund the energy performance contract that is expected to be installed by Siemens as directed by your office.

Each financing proposal was based upon the following metrics:

- Type of financing required: tax exempt municipal lease
- Term: Requested amortization term of eleven (11) years
- Construction period is assumed to be four (4) months
- Amount to be financed: \$ 549,010.69
- First payment, projected to be January 30, 2014. End of construction period, projected to be December 30, 2013
- Payments: Quarterly
- Fixed rate structure: Rate to include all documentation, set-up, origination and other costs in the markup amount
- Index: Like term Treasuries or similar index
- Rate Lock: Requested, outlined by the offeror
- Amortization schedule

Results of the financing proposal solicitation are presented on the following page, attached as Exhibit A.

These responses to the Request for Proposal dated August 1, 2013 are respectfully submitted.

Sincerely,

Linda K. Rega
Manager, Financial Services

Cc: Mark Cram, Siemens

Exhibit A

Item	Lender	Rate for 8 Year Term	Notes
1	Zions Bank	(A) 3.34% tax exempt rate: 10 year repayment (B) 2.53% Years 1-5; adjusted and fixed for years 6-10; adjusted and fixed for years 11 tax exempt rate	1. Zions Bank submitted proposals for two different loan structures: (A) Zions Bank is offering a fixed tax exempt interest rate of 3.34% for a four month construction period, and a subsequent repayment period of 10 years. (B) Zions Bank is offering a tax exempt interest rate of 2.53% which is fixed for the 4 month construction period and years 1-5; and will be adjusted and fixed at a new rate for years 6-10; and will be adjusted and fixed at a new rate for year 11. The adjusted rate will be indexed to the Federal Home Loan Bank of Seattle, Washington 5 year advanced rate. 2. The interest rates are locked until October 1 st , 2013 if accepted by the city by August 23 rd , 2013. 3. Zions Bank will not charge any fees. 4. Prepayment is allowed without penalty, following 30 day notice to Zions Bank.
2	Siemens Public	3.3205% tax exempt rate	1. Siemens Public is offering a rate which will be fixed for the term of the lease. The rate of 3.3205% is based upon the current yield of 2.21% for the seven (7) year Swap rate (USD) on August 7, 2013 as reported in the Federal Reserve Statistical Release H.15. The actual rate will be fixed on the Lease Commencement Date, or escrow funding date. 2. This proposal expires on September 9 th , 2013. 3. Customer is responsible for escrow fees, if any. 4. Loan cannot be repaid in the first year. After one year, prepayment will be allowed on a payment date and a prepayment penalty equal to 2% of the outstanding balance will be charged.
3	Wells Fargo		1. Wells Fargo did not respond to the RFP for financing.
4	Chase Bank		1. Chase Bank responded that they are unable to finance ESPC projects smaller than \$2.0MM.
5	PNC Bank	2.723% - Fixed until 8/20/2013	1. PNC is offering a fixed rate of 2.723% which is locked until August 20 th if the bid is accepted by August 20 th , 2013. Beginning August 21 st , the rate will be locked at 2.87% until

	(PNC Bank, cont'd)	2.870% - Fixed until 8/30/2013	August 30 th , 2013. After August 30 th , the rate will adjust up or down, by the change in the 10 year interest rate swap times 0.65 and then added or subtracted to the base Lease Rate of 2.723% to determine the lease rate three days prior to lease funding. 2. \$250.00 escrow fee 3. Loan cannot be repaid in the first two years. After two years, with 30 day notice to Lender a prepayment penalty equal to 3% of the outstanding balance will be charged.

Article 1: Scope of FIM Work

- 1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide each and every item of cost and expense necessary for the following scope of FIM work.
- 1.2 *Specific Elements:* The Work shall include the following:
- 1.2.1 FIM 1.00 Lighting Retrofits (Street Lights) – Retrofit or replace the existing high pressure sodium and metal halide fixtures with an induction technology. The Lighting Retrofit will consist of the following types of measures:
- Cobra Head: new induction fixture
 - Shoe Box: induction retrofit kit
 - Decorative Fixtures: induction retrofit kit
- Quantities shall be as indicated in Exhibit C, Article 5, Table 5.1.1.
- 1.2.2 FIM 2.00 Lighting Relocation (Street Lights) - Relocate existing street light fixtures on same pole, including new arm (if necessary). Lamps for these fixtures will be retrofitted in FIM 1.00.
- The Lighting Relocation will consist of the following types of measures:
- Relocate 21 fixtures
- 1.3 *Technical Specifications, Drawings, and Exhibits:* The Work shall be performed in accordance with the following specifications, drawings and other attachments hereto, which are specifically incorporated herein and made part hereof:
- 1.3.1 FIM 1.00: Lighting Retrofits (Street Lights) - See Attachment 1
- 1.3.2 FIM 2.00: Lighting Relocation (Street Lights)
- 1.4 **CLIENT'S Responsibility:**
- 1.4.1 Facilitate access to Work area throughout construction period.
- 1.4.2 Provide CLIENT designated representative for CLIENT acceptance testing.

Article 2: FIM Work Implementation Period

- 2.1 Commencement of Work:
- 2.1.1 SIEMENS shall commence the Work 21 calendar days from the Effective Contract Date, and shall perform the Work diligently and shall complete the Work no later than 180 calendar days from the day of commencement.

Exhibit A - Scope of Work and Services
Farmington, Utah

- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements are as follows and to be determined by final contract date and adjusted accordingly:
- 2.3 FIMs Installations Begins October 7, 2013 based on final design schedule and will be adjusted accordingly and ends January 15, 2014.
- 2.4 Project close out begins immediately following final FIM installation January 16, 2014 and ends January 30, 2014.
- 2.5 Commissioning begins immediately following the completion of each individual FIM and Final Punch lists for each FIM start date varies. Final completion ends January 30, 2014 .

Article 3: Scope of Performance Assurance Technical Support Program

- 3.1 SIEMENS will provide ongoing services to facilitate the performance of this program for the period of eleven(11) years. The ongoing responsibilities specific to this Performance Solution program's scope are included in the Performance Assurance Services Program as described herein. Lighting Retrofits – During Commissioning SIEMENS will inspect the lighting systems installed for proper operation and to verify that the correct replacement lamps are being used. SIEMENS will also verify the correct rate schedule is updated with the utility company (Rocky Mountain Power).
- 3.2 CLIENT will provide copies of all utility bills to SIEMENS. SIEMENS will utilize the utility data to provide the CLIENT with an analysis for each improvement measure based on the type of measurement and verification protocol specified.
- 3.3 CLIENT will maintain a lamp replacement log to record any lamp replacements. CLIENT will be responsible for notifying SIEMENS of any changes that affect energy use or the consumption pattern. The impact of such changes on the Guaranteed Energy Savings will be determined by SIEMENS through engineering analysis.
- 3.4 SIEMENS will present annual M&V reports (years 1-11) to the CLIENT for review. The annual reports will be delivered 60 days from the end of the reporting period. SIEMENS will meet with representatives of CLIENT at the conclusion of the first year measurement and verification period to review energy savings and ensure commitments are being met.

Article 4: Scope of Maintenance Services Technical Support Program

- 4.2 CLIENT has elected to secure a maintenance contract through a third party. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date. CLIENT agrees that it will maintain the equipment per manufacturer specifications and that it will operate the Equipment in accordance with the Contracted Baseline described in Article 7 of Exhibit C. If CLIENT fails to properly maintain or operate the Equipment, SIEMENS shall have the right to modify the Performance Guarantee pursuant to Article 4 of the Agreement
- 4.3 This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

SIEMENS:

Exhibit A - Scope of Work and Services
Farmington, Utah

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____



August 12, 2013

Ms. Linda Rega, CPA, LEED GA
Manager Financial Services
Siemens Industry, Inc.
Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, IL 60089
c/o: City of Farmington City, UT

Via Email: linda.rega@siemens.com

RE: Request for Proposal – Lease Purchase Financing (the “RFP”)

Dear Ms. Rega,

PNC Equipment Finance, LLC for itself, its successors and assigns, is pleased to submit this tax-exempt Lease Purchase Agreement Proposal (the “Proposal”) to the City of Farmington City for the purchase, acquisition and installation of an Energy Performance Contract (further described below). Our Proposal is as follows:

LESSEE:	City of Farmington City
LESSOR:	PNC Equipment Finance, LLC
VENDOR:	Siemens Industry, Inc., Building Technologies Division
TYPE OF FINANCING:	Tax-exempt Lease Purchase Agreement (the “Agreement”) with \$1.00 buyout option at end of lease term. Said Agreement shall be a net lease arrangement whereby Lessee is responsible for all costs of operation, maintenance, insurance and taxes.
BANK QUALIFICATION:	This Proposal assumes that the Lessee will be issuing less than \$10 million in tax-exempt debt during calendar year 2013. Furthermore, it is assumed that the Lessee will designate this issue as a qualified tax-exempt obligation pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). A portion of each Lease Payment allocated as “interest” will be excludable from the gross income for federal income tax purposes pursuant to Section 103(a) of the Code.
TYPE OF EQUIPMENT/PROJECT:	Street Lighting All prices, terms, conditions and selection are solely by Lessee.
FINANCED AMOUNT:	\$549,010.69
PAYMENT MODE/FREQUENCY:	Quarterly in Arrears <i>(first payment due after construction period)</i>
LEASE TERM:	Eleven (11) Years plus Four (4) Month Construction Period

LEASE RATE:

Option 1: 2.723 %: Floating after August 20, 2013
Option 2: 2.870%: Fixed until August 30, 2013

LEASE PAYMENTS:

See Amortization Schedules
(to match to cash flow savings)

ESCROW FUNDING OPTION:

At lease closing, Lessor shall fund the entire Financed Amount into an escrow account from which disbursements will be made to the existing Lessor and to equipment provider(s) as directed. Escrow agent will either be Lessor or third-party provider selected by Lessor and approved by Lessee. All escrow earnings will be for the benefit of Lessee. A set-up fee for Lessor's escrow arrangement will be \$250.00, due at lease closing.

INSURANCE:

The Lessee shall furnish confirmation of all risk physical damage insurance coverage for the full cost of the property plus \$2 million combined single limit property damage and bodily injury insurance covering the property. Lessor shall be named as loss payee and additional insured on such coverage.

INDEXED FINANCING RATE:

Lessor reserves the right to adjust the Lease Rate to market conditions prior to documentation and funding. The Lease Rates offered herein shall be indexed to the 10-year interest rate swap as published at <http://www.federalreserve.gov/releases>. On August 8, 2013, the H.15 10-year interest rate swaps is 2.76%. The lease rate used to establish the periodic lease payments shall be adjusted, up or down, by the change in the interest rate swap times 0.65 and then added or subtracted to the base Lease Rate of 2.723% to determine the lease rate for the lease schedule, three business days prior to lease funding.

AUTHORIZED SIGNORS:

The Lessee's governing board shall provide Lessor with its resolution or ordinance authorizing this Agreement and shall designate the individual(s) to execute the Agreement used therein.

PERFORMANCE CONTRACT:

The Lessee shall furnish a copy of the executed Performance Contract from the Vendor prior to funding.

SAVINGS GUARANTEE:

Vendor shall provide a copy of the Savings Guarantee to Lessor prior to funding.

PERFORMANCE AND PAYMENT BOND:

Vendor shall provide a Performance and Payment Bond (the "Bond") listing Lessor as dual obligee prior to lease funding.

LEGAL OPINION:

The Lessee's counsel shall furnish Lessor with an opinion covering this Agreement. This opinion shall be in a form and substance satisfactory to Lessor at Lessee's cost.

City of Farmington City
Request for Proposal - Lease Purchase Financing
August 12, 2013

LEGAL TITLE:

Legal title to the equipment during the lease term shall vest in the Lessee, with Lessor perfecting a first security interest through uniform commercial code filing or any other such instruments as may be required by law. Upon performance of the terms and conditions of the Agreement, the Lessee shall have the option to purchase all equipment for \$1.00.

DOCUMENTATION:

Lessor shall provide the Agreement. A form of the Agreement is provided with this Proposal.

PREPAYMENT OPTION:

So long as Lessee is not in default of the Agreement, Lessee shall have the option of paying off this transaction according to the Termination Values listed on the Amortization Schedules as provided in this Proposal. Partial prepayments will not be permitted under this Agreement.

PROPOSAL EXPIRATION:

This Proposal will automatically expire at the end of business on September 15, 2013 unless accepted in writing by Lessee or extended in writing by Lessor. The Agreement must be fully executed and to the satisfaction of Lessor by such date. After August 20, 2013, Lessor reserves the right to adjust the interest rate according to the Indexed Financing Rate.

This Proposal is subject to final credit approval by Lessor and approval of Agreement in Lessor's sole discretion. To render a credit decision, Lessee shall provide Lessor with its most audited financial statements and a copy of its most current year's budget.

I trust that you will find the contents of this Proposal to your satisfaction. If you should have any questions please contact me at 614-463-6580 or toll free at 866-215-9619 ext. 2.

Sincerely,
PNC Equipment Finance



Alan Zuelke
Business Development Officer
PNC Equipment Finance, LLC
155 E. Broad Street
Columbus, OH 43240

ACCEPTED BY:

By: _____

Title: _____

Date: _____

AMORTIZATION SCHEDULE(S)

Floating after August 20, 2013

Compound Period: Quarterly
Nominal Annual Rate: 2.734%

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance	Termination Value
Loan	8/30/2013				549,010.69	Non Callable
1	1/30/2014	13,177.29	6,278.15	6,899.14	542,111.55	Non Callable
2	4/30/2014	13,177.29	3,705.33	9,471.96	532,639.59	Non Callable
3	7/30/2014	13,177.29	3,640.59	9,536.70	523,102.89	Non Callable
4	10/30/2014	13,177.29	3,575.41	9,601.88	513,501.01	Non Callable
5	1/30/2015	13,146.32	3,509.78	9,636.54	503,864.47	Non Callable
6	4/30/2015	13,146.32	3,443.91	9,702.41	494,162.06	Non Callable
7	7/30/2015	13,146.32	3,377.60	9,768.72	484,393.34	Non Callable
8	10/30/2015	13,146.32	3,310.83	9,835.49	474,557.85	Non Callable
9	1/30/2016	13,839.33	3,243.60	10,595.73	463,962.12	Non Callable
10	4/30/2016	13,839.33	3,171.18	10,668.15	453,293.97	466,892.79
11	7/30/2016	13,839.33	3,098.26	10,741.07	442,552.90	455,829.49
12	10/30/2016	13,839.33	3,024.85	10,814.48	431,738.42	444,690.57
13	1/30/2017	14,273.39	2,950.93	11,322.46	420,415.96	433,028.44
14	4/30/2017	14,273.39	2,873.54	11,399.85	409,016.11	421,286.59
15	7/30/2017	14,273.39	2,795.63	11,477.76	397,538.35	409,464.50
16	10/30/2017	14,273.39	2,717.17	11,556.22	385,982.13	397,561.59
17	1/30/2018	14,721.34	2,638.19	12,083.15	373,898.98	385,115.95
18	4/30/2018	14,721.34	2,555.60	12,165.74	361,733.24	372,585.24
19	7/30/2018	14,721.34	2,472.45	12,248.89	349,484.35	359,968.88
20	10/30/2018	14,721.34	2,388.73	12,332.61	337,151.74	347,266.29
21	1/30/2019	15,183.65	2,304.43	12,879.22	324,272.52	334,000.70
22	4/30/2019	15,183.65	2,216.40	12,967.25	311,305.27	320,644.43
23	7/30/2019	15,183.65	2,127.77	13,055.88	298,249.39	307,196.87
24	10/30/2019	15,183.65	2,038.53	13,145.12	285,104.27	293,657.40
25	1/30/2020	15,660.81	1,948.69	13,712.12	271,392.15	279,533.91
26	4/30/2020	15,660.81	1,854.97	13,805.84	257,586.31	265,313.90
27	7/30/2020	15,660.81	1,760.60	13,900.21	243,686.10	250,996.68
28	10/30/2020	15,660.81	1,665.59	13,995.22	229,690.88	236,581.61
29	1/30/2021	16,153.30	1,569.94	14,583.36	215,107.52	221,560.75
30	4/30/2021	16,153.30	1,470.26	14,683.04	200,424.48	206,437.21
31	7/30/2021	16,153.30	1,369.90	14,783.40	185,641.08	191,210.31
32	10/30/2021	16,153.30	1,268.86	14,884.44	170,756.64	175,879.34

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Request for Proposal - Lease Purchase Financing
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33	1/30/2022	16,661.66	1,167.12	15,494.54	155,262.10	159,919.96
34	4/30/2022	16,661.66	1,061.22	15,600.44	139,661.66	143,851.51
35	7/30/2022	16,661.66	954.59	15,707.07	123,954.59	127,673.23
36	10/30/2022	16,661.66	847.23	15,814.43	108,140.16	111,384.36
37	1/30/2023	17,186.41	739.14	16,447.27	91,692.89	94,443.68
38	4/30/2023	17,186.41	626.72	16,559.69	75,133.20	77,387.20
39	7/30/2023	17,186.41	513.54	16,672.87	58,460.33	60,214.14
40	10/30/2023	17,186.41	399.58	16,786.83	41,673.50	42,923.71
41	1/30/2024	15,939.80	284.84	15,654.96	26,018.54	26,799.10
42	4/30/2024	15,939.80	177.84	15,761.96	10,256.58	10,564.28
43	7/30/2024	10,326.67	70.09	10,256.58	0.00	1.00
Grand Totals		642,220.27	93,209.58	549,010.69		

Fixed through August 30, 2013

Compound Period: Quarterly
Nominal Annual Rate: 2.870%

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance	Termination Value
Loan	8/30/2013				549,010.69	Non Callable
1	1/30/2014	13,177.29	6,591.34	6,585.95	542,424.74	Non Callable
2	4/30/2014	13,177.29	3,891.90	9,285.39	533,139.35	Non Callable
3	7/30/2014	13,177.29	3,825.27	9,352.02	523,787.33	Non Callable
4	10/30/2014	13,177.29	3,758.17	9,419.12	514,368.21	Non Callable
5	1/30/2015	13,146.32	3,690.59	9,455.73	504,912.48	Non Callable
6	4/30/2015	13,146.32	3,622.75	9,523.57	495,388.91	Non Callable
7	7/30/2015	13,146.32	3,554.42	9,591.90	485,797.01	Non Callable
8	10/30/2015	13,146.32	3,485.59	9,660.73	476,136.28	Non Callable
9	1/30/2016	13,839.33	3,416.28	10,423.05	465,713.23	Non Callable
10	4/30/2016	13,839.33	3,341.49	10,497.84	455,215.39	468,871.85
11	7/30/2016	13,839.33	3,266.17	10,573.16	444,642.23	457,981.50
12	10/30/2016	13,839.33	3,190.31	10,649.02	433,993.21	447,013.01
13	1/30/2017	14,273.39	3,113.90	11,159.49	422,833.72	435,518.73
14	4/30/2017	14,273.39	3,033.83	11,239.56	411,594.16	423,941.98
15	7/30/2017	14,273.39	2,953.19	11,320.20	400,273.96	412,282.18
16	10/30/2017	14,273.39	2,871.97	11,401.42	388,872.54	400,538.72
17	1/30/2018	14,721.34	2,790.16	11,931.18	376,941.36	388,249.60
18	4/30/2018	14,721.34	2,704.55	12,016.79	364,924.57	375,872.31
19	7/30/2018	14,721.34	2,618.33	12,103.01	352,821.56	363,406.21
20	10/30/2018	14,721.34	2,531.49	12,189.85	340,631.71	350,850.66
21	1/30/2019	15,183.65	2,444.03	12,739.62	327,892.09	337,728.85
22	4/30/2019	15,183.65	2,352.63	12,831.02	315,061.07	324,512.90

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23	7/30/2019	15,183.65	2,260.56	12,923.09	302,137.98	311,202.12
24	10/30/2019	15,183.65	2,167.84	13,015.81	289,122.17	297,795.84
25	1/30/2020	15,660.81	2,074.45	13,586.36	275,535.81	283,801.88
26	4/30/2020	15,660.81	1,976.97	13,683.84	261,851.97	269,707.53
27	7/30/2020	15,660.81	1,878.79	13,782.02	248,069.95	255,512.05
28	10/30/2020	15,660.81	1,779.90	13,880.91	234,189.04	241,214.71
29	1/30/2021	16,153.30	1,680.31	14,472.99	219,716.05	226,307.53
30	4/30/2021	16,153.30	1,576.46	14,576.84	205,139.21	211,293.39
31	7/30/2021	16,153.30	1,471.87	14,681.43	190,457.78	196,171.51
32	10/30/2021	16,153.30	1,366.53	14,786.77	175,671.01	180,941.14
33	1/30/2022	16,661.66	1,260.44	15,401.22	160,269.79	165,077.88
34	4/30/2022	16,661.66	1,149.94	15,511.72	144,758.07	149,100.81
35	7/30/2022	16,661.66	1,038.64	15,623.02	129,135.05	133,009.10
36	10/30/2022	16,661.66	926.54	15,735.12	113,399.93	116,801.93
37	1/30/2023	17,186.41	813.64	16,372.77	97,027.16	99,937.97
38	4/30/2023	17,186.41	696.17	16,490.24	80,536.92	82,953.03
39	7/30/2023	17,186.41	577.85	16,608.56	63,928.36	65,846.21
40	10/30/2023	17,186.41	458.69	16,727.72	47,200.64	48,616.66
41	1/30/2024	15,939.80	338.66	15,601.14	31,599.50	32,547.49
42	4/30/2024	15,939.80	226.73	15,713.07	15,886.43	16,363.02
43	7/31/2024	16,000.45	114.02	15,886.43	0.00	1.00
Grand Totals		647,894.05	98,883.36	549,010.69		

**Technical Energy Audit 90% Milestone Meeting
Farmington City Street Lighting**

Meeting Number: 4
Meeting Date: August 5, 2013

Meeting Location: 160 S Main
Meeting Time: 10:00 AM

A. Update of activities to date

1. On-site visits
2. Final verification of street lighting counts, locations, etc.
Final project quotes from sub-contractors

B. Review of final proposed project

1. Relocation of existing street lights – *LOWERING LIGHTS ON MAIN*
2. Proposed scope – Induction Only

C. Needs

1. View final financial document
2. Maintenance Savings
3. Energy Savings
4. M&V final numbers
 - a. Statutory requirements
 - b. Annual tracking
5. Utility Incentive

D. Next steps

1. Review Contract Documents
2. Receive Finance RFP proposals

E. Timeline

1. Review updated Development Action Tool

F. Action Items

1. Next Meeting Date – City Council Meeting, August 20, 2013

SIEMENS

DEVELOPMENT ACTIONS								
Project:	Farmington City Utah Street Lighting Upgrades				Creation Date:		05/05/13	
					Latest Revision Date:		08/01/13	
#	Type	Task	Person(s) Responsible	Start Date	Plan Completion Date	Actual Completion Date	Notes	Internal/ External
1	Scope	TEA Kickoff Meeting	City Staff, Siemens Staff	04/24/13	04/25/13	04/28/13	Completed	External
2	Legal	Send Contract Template to Dave Milhelm to review with legal	Mark Cram	05/03/13	05/03/13	05/03/13	Completed	External
3	Scope	Collect Billing and Infrastructure Data	Steven Rouse, Ray White	04/09/13	05/15/13	05/15/13	Completed	External
4	Scope	Prepare 20% Meeting Data	Siemens Staff	05/15/13	05/30/13	05/30/13	Completed	External
5	Legal	City Manager and City Attorney Contract Review	City Manager, City Attorney	05/03/13	06/03/13	06/03/13	Completed	External
6	Scope	30% TEA Presentation Meeting	City Staff, Siemens Staff	06/03/13	06/03/13	06/03/13	Completed	External
7	Approvals	30% Scope Approval	City Staff	06/03/13	06/03/13	06/03/13	Completed	External
8	Scope	Prepare 60% Meeting Data	Siemens Staff	06/03/13	06/30/13	06/30/13	Completed	External
9	Scope	60% TEA Presentation Meeting	City Staff, Siemens Staff	07/01/13	07/01/13	07/01/13	Completed	External
10	Approvals	60% Scope Approval	City Staff	07/01/13	07/01/13	07/01/13	Completed	External
11	Scope	Prepare 90% Meeting Data	Siemens Staff	07/01/13	07/30/13	07/30/13	Completed	External
12	Financial	RFP to Lending Institutions	Siemens Staff	07/15/13	07/30/13	08/01/13	Completed	External
13	Scope	90% TEA Meeting	City Staff, Siemens Staff	08/05/13	08/05/13			External
14	Approvals	90% Scope Approval	City Staff	08/05/13	08/05/13			External
15	Financial	Review Lending Institution Proposals	City Staff	07/30/13	08/12/13			External
16	Scope	Farmington City Review of TEA and comment period	City Staff	08/05/13	08/12/13			External
17	Financial	Finalize Financing Method		08/12/13	08/19/13			External
18	Scope	Siemens Final Report Completion	Siemens Staff	08/12/13	08/19/13			External
19	Financial	Finalize Finance Proposal	Lending Institution	08/12/13	08/19/13			External

Data downloaded on:

8/1/13 2:29 PM

Cashflow

Year	1	2	3	4	5	6	7	8	9	10	11	Total
PROGRAM SAVINGS												
Energy Savings	\$ 20,409	\$ 21,225	\$ 22,074	\$ 22,957	\$ 23,876	\$ 24,831	\$ 25,824	\$ 26,857	\$ 27,931	\$ 29,049	\$ 30,210	\$ 275,245
Operational Savings	\$ 37,352	\$ 38,553	\$ 39,810	\$ 41,124	\$ 42,497	\$ 43,927	\$ 45,414	\$ 46,959	\$ 48,562	\$ 50,225	\$ 51,948	\$ 447,185
Construction Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Annual Gross Savings	\$ 57,761	\$ 59,778	\$ 61,884	\$ 64,081	\$ 66,373	\$ 68,758	\$ 71,238	\$ 73,816	\$ 76,493	\$ 79,274	\$ 82,158	\$ 722,430
Cumulative Savings	\$ 57,761	\$ 117,556	\$ 179,440	\$ 243,521	\$ 309,894	\$ 378,652	\$ 449,890	\$ 523,706	\$ 600,199	\$ 679,473	\$ 761,631	\$ 722,430
Annual Contribution	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

PROGRAM COSTS												
Principal & Interest	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 59,868	\$ 658,553
Service TSP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Performance Assurance	\$ 3,052	\$ 3,113	\$ 3,174	\$ 3,235	\$ 3,296	\$ 3,357	\$ 3,418	\$ 3,479	\$ 3,540	\$ 3,601	\$ 3,662	\$ 37,590
Annual Gross Costs	\$ 62,920	\$ 62,981	\$ 63,042	\$ 63,103	\$ 63,164	\$ 63,225	\$ 63,286	\$ 63,347	\$ 63,408	\$ 63,469	\$ 63,530	\$ 696,143
Cumulative Costs	\$ 62,920	\$ 125,902	\$ 188,944	\$ 251,986	\$ 315,028	\$ 378,069	\$ 441,111	\$ 504,153	\$ 567,195	\$ 630,237	\$ 693,279	\$ 696,143
CASH FLOW												
Annual Net Cash Flow	\$ (5,159)	\$ (3,203)	\$ (1,319)	\$ (525)	\$ 1,157	\$ 3,300	\$ 5,305	\$ 7,277	\$ 9,152	\$ 11,724	\$ 12,238	\$ 37,590
Cumulative Net Cash Flow	\$ (5,159)	\$ (8,362)	\$ (9,681)	\$ (10,206)	\$ (9,049)	\$ (5,749)	\$ (4,444)	\$ (3,167)	\$ (1,915)	\$ (681)	\$ 12,238	\$ 37,590

Energy Escalation	4%
Operational Escalation	3%
Service Escalation	2%
Payments per Year	4
Total Interest Payments	\$ 110,964.75

Program Cost	\$ 547,587.79
Rebates	\$ -
Down Payment	\$ -
Amount Financed	\$ 547,587.79
Annual Program Savings	\$ 56,850.12
Simple Payback (years)	9.6
Annual Interest Rate	3.20%
Finance Period	11

101 LIGHTS
EAP IF
INCLUDES
3MT ADSET

CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

SUBJECT: City Manager Report

1. Letter to Davis County Public Works – Kirk Schmaltz
2. City Council Follow-up List

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLEDEM
CITY MANAGER

August 26, 2013

Kirk Schmaltz
Davis County Public Works
1500 E 650 N
Fruit Heights UT 84037

RE: Budget in 2014 for 1100 W culvert over Farmington Creek.

Dear Mr. Schmaltz

The City is wanting the culvert over Farmington Creek at 1100 W. to be installed this next budget year of 2014, and is asking the County to budget for this project in the upcoming year of 2014. The subdivision, Farmington Creek Estates Phase 4, is being constructed on the south side of the creek, with the road and curb and gutter being put into place and with 1100 West ending on the north side of the creek, it would be advantageous to connect the road over the creek at this time. Enclosed are some photos showing this gap over the creek.

The City is willing to pay for its portion of the culvert of 37 feet for the widening of the culvert, which is estimated to be around \$78,000.00. The City will also pay for the installation of the road over the culvert once it is finished, which is estimated to be around \$43,000.00. The County's portion of the culvert is estimated to be around \$164,000.00.

The City would want the County to do all of the culvert as one project and to oversee the construction of it and the City would reimburse the County for the City's portion of the culvert. The City would like to have the culvert done by June 1, 2014, that way the City would have time to install the road before the June 30, 2014, budget ending date for the City.

Completing this project will assist in removing significant portions of west Farmington including portions of the Legacy Center and County facilities from the flood plain.

We appreciate this opportunity to work together with the County to finish this project as it will benefit the City and County for many years to come.

Sincerely,

Keith Johnson,
Assistant City Manager

cc: City Manager, Mayor and Council

TO DO LIST

Dave M	Initiated	04/19/12	Call Todd Godfrey on Farr trail easement issue and get 60 day request in play to review options.
Dave M	Not Started	09/06/12	Start appraisal for potential water tank sites.
Dave M	Not Started	02/05/13	Call Glen Leonard on Farmington History update.
Dave M	Not Started	02/20/13	Set up meeting with Ron Lindorf and other property owner near 650 West to discuss sales/trade possibilities.
Keith	Initiated	05/21/13	Set up meeting to review the development agreement requirements.
Keith	Initiated	01/18/13	Work up general guidelines for use by community groups for after hours use of building.
Keith	Not Started	06/18/13	Have County provide answers to certified tax rate changes and what it is being adjusted.
Keith	Not Started	08/20/13	Get with each Council member and set up individual City email accounts.
Holly	Not Started	06/19/12	Set up meeting with me and Glen Leonard to talk to him about Richards Mill site included on Historical Bus Tour and how we move that preservation effort forward.
Holly	Not Started	07/17/12	Invite County Library Director to make a presentation on library services in the Farmington area and changes to new branch.
Holly	Initiated	08/20/13	Work with Jim Young ASAP to get nomination letter with unanimous support from Mayor and Council for his consideration to Utah league Board.
Dave P	Not Started	01/18/11	Talk to Dave M. on sidewalk survey and how we are going to address missing links created by wetlands, no development plans, etc.
Dave P.	Initiated	02/16/11	Come back to PC with recommended components for Affordable Housing compliance. Think multi-year and only tools we could accomplish in Farmington without a lot of administrative oversight. Staffing is limited.
Dave P.	Initiated	03/01/11	How do we monitor Kambouris landscaping requirement? (Follow up)
Dave P.	Initiated	03/01/11	Do Flag Lot study and prepare future Staff Report. How big is program? Steps to mitigate? Is conforming criteria for future development (splitting) good enough or do we need more?
Dave P.	Initiated	03/29/11	Get matrix done on all existing approvals, development agreements, plats, etc. no later than April 22nd.
Dave P	Not Started	06/07/11	Beautification plan for Park Lane interchange. Talk to Dave M about this.
Dave P	Not Started	10/04/11	Bring back zoning text amendment language to include samples of detrimental use specific to section 11-18-107(2)(D) vi (Business Park)
Dave P	Not Started	10/04/11	Talk to Eric and get Dave M recommendation on digital plan storage. Costs vs. benefits, etc. Have Eric put together the staff report if this is going to be something we pursue.
Dave P	Initiated	08/07/12	Bring back a list of conditional and permitted uses more consistent with the historic nature of the downtown area related to Chapter 15. Make sure we look at the BR and OTR zones separately if need be. MAKE SURE THE HISTORICAL COMMITTEE FORMALLY WEIGHS IN ON THIS in writing before it goes to PC and CC for review. Remind the history committee their opinion is sought and valued by the CC makes the call at the end of the day.
Dave P	Initiated	08/07/12	Jared Darger - System improvement costs. While this is fresh on our minds draft a letter to Jared consistent with City Code and State law as to what Jared's responsibilities and City's will be in relationship to the road costs discussed last night. I want to see letter draft before it goes out.
Dave P	Initiated	02/20/13	Start study on sign ordinance modifications to address height, number, quantity and control issues of signs in the mixed use zones and those abutting the freeways. I want this back in front of the Council for discussion March 19th.
Dave P	Initiated	05/21/13	Work with Todd and get the TDR Ordinance ready for PC and CC apportion. Also put together a staff report for June 4th (Probably closed meeting - Property acquisition where we talk about the sending and receiving zones as it relates to a future park site. We need to have those ready by the time the ordinance is adopted.)
Dave P	Not Started	08/20/13	Have Historic Preservation Committee get affidavits from those affected by Landmark Designation as to for or against for their specific parcels and bring back at a future meeting
Dave P	Not Started	08/20/13	Have Ralph provide WRITTEN update on all steps taken and current status to address code compliant problem for the Walker Lane home and the nuisance problem for home located at 1470 South 200 East.

Wayne	Not Started	08/20/13	Provide informational memo to Dave M with copy of applicable ordinance for pan handling in Farmington. Provide outline of what is included and what if any changes you would suggest.
Neil	Not Started	06/16/13	Prepare Staff Report with recommendations on a permanent canopy structure for Forbush park stage.
Guido	Not Started	06/16/13	Bring back Staff Report to Council before memory gets cold on your recommendations for signage modifications for public noticing of the Fireworks restrictions ordinance.

CITY COUNCIL AGENDA

For Council Meeting:
September 3, 2013

SUBJECT: Mayor Harbertson & City Council Reports

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